

1 MS. CLEMENT: Jenny Hitt, your Honor.

2 THE COURT: Jenny?

3 MS. CLEMENT: Hitt, H-I-T-T.

4 THE COURT: Okay. Bring the jury in, Terrance, and
5 then Miss Hitt. Okay?

6 THE COURT ATTENDANT: Yes, ma'am.

7 MS. CLEMENT: She's also a 776 witness.

8 THE COURT: Okay.

9 **(The following proceedings were then had in open**
10 **court, in the presence of the jury.)**

11 THE COURT ATTENDANT: Please come to order.
12 Department 45 is once again in session. The Honorable
13 Judge Judy Hersher presiding.

14 You may be seated.

15 THE COURT: Could we have our first witness called
16 in, please. Jenny Hitt.

17 MS. CLEMENT: Yes, your Honor.

18 The plaintiff calls Jenny Hitt, H-I-T-T. J-E-N-N-Y.

19 (Pause.)

20 THE COURT: Miss Hitt, if you would please come
21 forward to our witness stand.

22 And after you have your personal belongings put down
23 somewhere, if you would remain standing, raise your right
24 hand and face the clerk.

25 THE CLERK: Do you solemnly state that the testimony
26 you are about to give shall be the truth, the whole truth,
27 and nothing but the truth, so help you God?

28 THE WITNESS: I do.

1 THE CLERK: Thank you. Please be seated.

2 THE WITNESS: Thank you.

3 THE CLERK: Please state your full name and spell it
4 for the record.

5 THE WITNESS: Jenny Lynn Hitt, J-E-N-N-Y, L-Y-N-N,
6 H-I-T-T.

7 TESTIMONY OF

8 JENNY LYNN HITT, a witness called pursuant to 776 of the
9 Evidence Code by the Plaintiffs:

10 CROSS-EXAMINATION

11 BY LESLEY A. CLEMENT, Attorney at Law, Counsel on behalf of
12 the Plaintiffs:

13 Q. Good morning, Miss Hitt.

14 A. Good morning.

15 Q. You are very soft-spoken, so I'm going to ask you to
16 try to use your big voice. Thank you.

17 Okay. Miss Hitt, can you tell us, where do you
18 live?

19 A. Rocklin.

20 Q. And in -- have you ever worked for Emeritus?

21 A. Yes.

22 Q. And when did you work for Emeritus?

23 A. I started in September 2007 and ended in May 2010.

24 Q. And can you tell the jury, what Emeritus facility
25 did you work in?

26 A. Emerald Hills.

27 Q. And when you started in September of 2007, what was
28 your job title?

1 A. I was a resident assistant.

2 Q. And can you tell the jury what type of training you
3 had -- or strike that.

4 When I say "strike that," it means I didn't ask a
5 good question. So I'm going to ask it again.

6 Prior to working at Emerald Hills, did you have
7 prior experience working as a resident assistant?

8 A. No.

9 Q. And what had your previous job been before coming to
10 work for Emerald Hills?

11 A. I worked at Target.

12 Q. And in 2007, did you have a family?

13 A. Yes.

14 Q. And can you tell the jury what your family was at
15 that time.

16 A. I had two young children, a boy and a girl, age
17 three and five.

18 Q. And when you first started as a resident care
19 assistant at Emerald Hills, what type of training, if any,
20 did you get when you first started?

21 A. Um, I watched videos. And then after that, I
22 followed someone around.

23 Q. And shortly after you were hired, were you made a
24 med tech?

25 A. Yes.

26 MS. CLEMENT: Erik, can you please display for us
27 Exhibit 98, page 4. Top of the page, please.

28 Thank you.

1 **(Joint Exhibit Number 98, page 4, was marked for**
2 **identification.)**

3 MR. REID: Your Honor?

4 I don't believe this exhibit has been admitted into
5 evidence.

6 THE COURT: Let me just check.

7 This one actually hasn't.

8 MS. CLEMENT: Oh, it hasn't?

9 THE COURT: No.

10 MS. CLEMENT: Oh.

11 THE COURT: The one before it and the one after --
12 or several before and several after, but not this one.

13 MS. CLEMENT: Okay. Is there any objection to
14 moving the personnel file into evidence?

15 MR. REID: Yes, there is.

16 MS. CLEMENT: Can we have a sidebar about that?

17 THE COURT: Yes. Come on up.

18 Can I get 98 which is the last one.

19 (Whereupon an unreported bench conference was then
20 had in open court between the Court and counsel.)

21 Q. (By MS. CLEMENT) Is it true, Miss Hitt, that you
22 were made a med tech in September of 2007, shortly after
23 you were hired to be a caregiver?

24 A. Yes.

25 MS. CLEMENT: And at this time, your Honor, I'd seek
26 to move into evidence Exhibit 98, page 4.

27 MR. REID: No objection, your Honor.

28 THE COURT: All right. Page four is admitted.

1 **(Joint Exhibit Number 98, page 4, was received into**
2 **evidence.)**

3 Q. (By MS. CLEMENT) And is --

4 MS. CLEMENT: Sir, would you mind getting the lights
5 so the jury might be able to read that.

6 THE COURT ATTENDANT: Yes.

7 Q. (By MS. CLEMENT) Okay. And prior to being made a
8 med tech, did you go through the 16-hour med tech training?

9 A. No.

10 MS. CLEMENT: At this time --

11 Q. (By MS. CLEMENT) Well, did you get your med tech
12 training in December of 2007?

13 A. Yes.

14 MS. CLEMENT: At this time, your Honor, the
15 plaintiffs would seek to move into evidence Exhibit 98,
16 page 61.

17 **(Joint Exhibit Number 98, page 61 was marked for**
18 **identification.)**

19 THE COURT: It's the med tech certificate.

20 Any objection?

21 MR. REID: No, your Honor.

22 THE COURT: Sixty-one is admitted. Page 61 is
23 admitted.

24 **(Joint Exhibit Number 98, page 61 was received into**
25 **evidence.)**

26 Q. (By MS. CLEMENT) So prior to December of 2007, was
27 your only med tech training just following someone else
28 around?

1 A. Yes.

2 Q. And then in April of 2008, were you promoted to be
3 the lead med tech on the memory care -- excuse me, the lead
4 med tech for the assisted living?

5 A. Yes.

6 MS. CLEMENT: Your Honor, at this time the
7 plaintiffs would seek to move into evidence Exhibit 98,
8 page 43.

9 (Joint Exhibit Number 98, page 43, was marked for
10 identification.)

11 MR. REID: No objection, your Honor.

12 THE COURT: Page 43 is admitted.

13 (Joint Exhibit Number 98, page 43, was received into
14 evidence.)

15 Q. (By MS. CLEMENT) Now, prior to working at Emeritus
16 at Emerald Hills, did you ever have first aid training?

17 A. No.

18 Q. Was the first time you got first aid training on
19 April 24th, 2009?

20 A. Yes.

21 Q. And that was after you'd worked there for almost two
22 years?

23 A. Yes.

24 MS. CLEMENT: At this time, your Honor, the
25 plaintiffs would seek to move into Exhibit 98, page 85.

26 (Joint Exhibit Number 98, page 85 was marked for
27 identification.)

28 THE COURT: Any objection?

1 MR. REID: No, your Honor.

2 THE COURT: Page 85 is admitted.

3 **(Joint Exhibit Number 98, page 85, was received into**
4 **evidence.)**

5 Q. (By MS. CLEMENT) Had you had any experience prior
6 to April of 2009 with first aid, other than things for your
7 kids?

8 A. No.

9 Q. Now, after you became a med tech, you had that
10 training in December of 2007, about three months after you
11 started passing medications. How long after that was it
12 before you got a refresher course?

13 A. At least a year or two.

14 Q. Okay.

15 MS. CLEMENT: Your Honor, at this time the
16 plaintiffs would seek to move into evidence Exhibit 98,
17 page 84.

18 **(Joint Exhibit Number 98, page 84, was marked for**
19 **identification.)**

20 MR. REID: No objection.

21 THE COURT: Page 84 is admitted.

22 **(Joint Exhibit Number 98, page 84, was received into**
23 **evidence.)**

24 Q. (By MS. CLEMENT) So this is the med tech refresher
25 course for four hours, December 11th, 2009.

26 Is that the only refresher course you ever got?

27 A. Yes.

28 Q. Okay. So a total of 20 hours of training over the

1 course of your entire employment at Emeritus on med techs?

2 A. Yes.

3 Q. Now, while you worked at Emeritus you did -- you
4 worked with the dementia residents as well, true?

5 A. Yes.

6 Q. And there was dementia residents both in the Memory
7 Care Unit and on the assisted living side?

8 A. Yes.

9 Q. And was the first time you got the dementia
10 training, "Join Their Journey," from Emeritus in 2010?

11 A. Yes.

12 MS. CLEMENT: Your Honor, at this time the
13 plaintiffs would seek to move into evidence Exhibit 98,
14 page 86.

15 **(Joint Exhibit Number 98, page 86 was marked for**
16 **identification.)**

17 MR. REID: No objection, your Honor.

18 THE COURT: Page 86 is admitted.

19 **(Joint Exhibit Number 98, page 86, was received into**
20 **evidence.)**

21 Q. (By MS. CLEMENT) And Beth Murphy, she was the
22 Memory Care Unit director after Alicia Parga?

23 A. Yes.

24 MS. CLEMENT: Thank you. You can up the lights now,
25 if you don't mind.

26 Q. (By MS. CLEMENT) So tell the jury what -- what
27 shift did you normally work?

28 A. P.M. shift. That would be from 2:00 to 10:00.

1 Q. And where was your principal part of the building
2 that you worked?

3 A. The assisted living, the AL side.

4 Q. And when you first started working, were there
5 usually about 20 residents on each of the three floors of
6 assisted living?

7 A. Yes.

8 Q. And once you became the lead med tech in April of
9 2008, when there was no manager on duty, what were your
10 responsibilities?

11 A. To make sure that the building ran right. And if
12 there was any incidences, that I was to take care of 'em.

13 Q. So describe for the jury what you mean by
14 "incidences."

15 A. Any problems with the staff. Any problems with any
16 of the residents or family members that came up during my
17 shift, I would have to take care of them. As if like a
18 staff member had to leave, I would have to find covering --
19 covering for them. Um, if a resident had any problems with
20 the staff or first aid problems, I would be the first one
21 they would call.

22 Q. Were you supposed to be assessing residents who had
23 had a change in condition?

24 A. Yes.

25 Q. Were you supposed to be making decisions whether
26 residents would leave the building on a 911 to the hospital
27 or stay?

28 A. Yes.

1 Q. Did you get any training on that, on how to assess a
2 resident?

3 A. No.

4 Q. When residents would be taken out of the building on
5 a 911 call, who from the facility would go with them?

6 A. No one.

7 Q. Was that true even with residents who were suffering
8 from dementia?

9 A. Yes.

10 Q. Can you tell us what the job duties were for a
11 resident assistant.

12 A. Um, bathroom care, dressing, showers. Bringing them
13 down for meals. Any small duties, like helping them fix
14 their TV. Cleaning. Anything that they needed.

15 Q. And as they -- and then once you became a med tech,
16 tell us what your job duties were there.

17 A. Um, passing medications, giving the medications to
18 the residents at the right time. PRNs, or as requested
19 medications. Contacting doctors, making appointments,
20 refilling medications. Making any changes to the meds.
21 Making appointments. Calling families. Destroying
22 medications.

23 Q. So when you say "making appointments," was it your
24 responsibility as a med tech to make doctors' appointments?

25 A. Yes.

26 Q. Who would be your supervisor once you became a
27 med tech?

28 A. The nurse.

1 Q. Who was the nurse that hired you?

2 A. Mary.

3 Q. Is that Mary Kasuba?

4 A. Yes.

5 Q. And how long after you started did -- was Mary
6 Kasuba there?

7 A. A few weeks.

8 Q. And then after Mary Kasuba left, how long did you go
9 without a nurse?

10 A. Hmm, a few months.

11 Q. And did you get another full-time nurse after that?

12 A. Yes.

13 Q. And do you remember who the next full-time nurse
14 was?

15 A. Peggy Stevenson.

16 Q. And when Peggy Stevenson was the nurse, who was your
17 executive director?

18 A. Nancy Cordova.

19 Q. And was it your experience -- in working as the lead
20 med tech on the p.m. shift, were you also doing treatments
21 for the residents?

22 A. Yes.

23 Q. And can you describe what type of treatments that
24 you were giving to the residents as a med tech at
25 Emerald Hills?

26 A. Anywhere from wound care to breathing treatments.

27 Um, that's pretty much all I can remember.

28 Q. How about medications that you were giving to the

1 residents? Were you ever told by any of the supervisors,
2 either Nancy or Peggy, or any of the other nurses who
3 worked there, that you were expected to give insulin
4 injections to the residents?

5 A. Yes.

6 Q. And did you give insulin injections in the course of
7 your employment there?

8 A. Yes.

9 Q. Had you had any prior experience with insulin
10 injections?

11 A. No.

12 Q. Now, did you spend some time in the Memory Care Unit
13 as well as working on the assisted living side?

14 A. Yes.

15 Q. And why would you be in the Memory Care Unit?

16 A. To help out the RAs that were in there.

17 Q. And was it your experience that there was usually
18 about, oh, 15 to 18 residents over there in the Memory Care
19 Unit?

20 A. Yes.

21 Q. And all of those residents had dementia?

22 A. Yes.

23 Q. So how often would you go to the Memory Care Unit
24 during your shift?

25 A. Multiple times.

26 Q. And can you describe for the jury what types of
27 things that you would be doing over there in terms of
28 actually providing care to the residents?

1 A. Um, I would take residents to the bathroom. I would
2 give showers. I would get them dressed. I would keep them
3 busy. I would be there to watch the doors so no residents
4 would escape. I would read to them. I would play music
5 for them. I would feed them.

6 Q. And when you would be over in the Memory Care Unit,
7 who would be covering your residents on the assisted living
8 side?

9 A. The RAs.

10 Q. And typically on the p.m. shift, how many RAs would
11 be on the assisted living side for the three stories?

12 A. At the most, two.

13 Q. Now, what documentation were you familiar with
14 filling out while you worked at Emerald Hills?

15 A. Um, mostly shower sheets.

16 Q. Okay. And what would you be documenting on the
17 shower sheets?

18 A. If we saw any discoloration on the skin or any,
19 like, bruises or cuts.

20 Q. How about ADLs? Were there activities of daily
21 living sheets or resident care sheets that you would be
22 filling out?

23 A. Not usually.

24 Q. And the medication administration record, was that
25 something you were responsible for?

26 A. Yes.

27 Q. And is the nickname for that MARs, M-A-R-S?

28 A. MARs. Yes.

1 Q. Okay. And did you have a practice of where you
2 would complete your MARs?

3 A. Yes. I would go over to the Memory Care Unit and
4 sit in the dining room.

5 Q. And why would you do that?

6 A. So the RAs could get the residents to bed. And if
7 there were any residents wandering, I would be there to
8 take care of them.

9 Q. And when you would be over on that side of the
10 building doing your MARs, who would be watching your
11 residents on the assisted living side?

12 A. The RA.

13 Q. So the one other RA for the whole building?

14 A. Yes.

15 Q. Now, did you ever have concerns that there weren't
16 enough staff to meet the needs of all the residents at
17 Emerald Hills?

18 A. All the time.

19 Q. And can you describe to the jury what your concerns
20 were regarding staffing.

21 A. That there wasn't enough staff to take care of the
22 residents like they needed to. Um, there were times where
23 there were so much to do and so much residents that needed
24 care, and it took a certain amount of time, that we didn't
25 have time to take care of the other residents and their
26 needed -- as much as they needed to. There was just too
27 much to do for one resident to be able to take care of all
28 the residents.

1 Q. So did you ever voice your concerns to any of your
2 supervisors that there wasn't enough staff to care for the
3 residents or that there was -- I'll just leave it with that
4 question.

5 A. Yes.

6 Q. And who did you raise those concerns with; that
7 there just wasn't enough staff to care for the residents?

8 A. Nancy Cordova, Peggy Stevenson, Jo Franklin. All my
9 supervisors.

10 Q. Okay. So how about anybody above your supervisors?
11 Did you ever talk to anyone from a regional level about
12 your concerns of understaffing?

13 A. Yes.

14 Q. Who did you speak with about that?

15 A. Audrey Withers and Mary Winters. Diana Engles.

16 Q. Any other nurses that were a regional level that you
17 spoke with?

18 A. Doris Marshall.

19 Q. So we know Nancy Cordova was the executive director
20 when Mrs. Boice was there.

21 Is that your recollection?

22 A. Yes.

23 Q. And then after Nancy Cordova, was the next executive
24 director Rich Lee?

25 A. Yes.

26 Q. So you complained to him as well?

27 A. Yes.

28 Q. And Peggy Stevenson was the nurse when Joan was

1 there, true?

2 A. Yes.

3 Q. And you complained to her?

4 A. Yes.

5 Q. Okay. And then Audrey Withers, was she -- what was
6 your understanding of what her role was in the company?

7 A. A corporate.

8 Q. And did she come to the facility sometimes to do
9 training sessions or have staff meetings with you and the
10 other staff members?

11 A. Usually, she only came when there needed to be
12 training of like a ED, or something that we really never
13 knew why she came. We just knew that she was there.

14 Q. And when she was there, did you make a point to
15 speak with her?

16 A. Yes.

17 Q. And Mary Winters, was she also corporate?

18 A. Yes.

19 Q. And did you understand her title to be Regional
20 Director of Operations?

21 A. Usually when anybody higher up, we just -- that's
22 what they were. We know them for -- as the higher-ups were
23 coming.

24 Q. Okay. And Jo Franklin, who was she?

25 A. A nurse.

26 Q. So was she a nurse that came sometime after Peggy
27 Stevenson?

28 A. Yes.

1 Q. And between Peggy Stevenson and Jo Franklin, did you
2 go for a period of time with no nurse?

3 A. Yes.

4 Q. And then Diana Engles, who was she?

5 A. She was a regional director for Memory Care Unit.

6 Q. How about Alicia Parga, the memory care director
7 when Joan was there? Did you ever speak with her about
8 your concerns regarding understaffing?

9 A. Yes.

10 Q. Beth Murphy, who took her place?

11 A. Yes.

12 Q. Now, with regard to your concern that some of the
13 residents were -- they took so much time, or they were too
14 much care for you to have time to then go care for the
15 other residents, did you ever raise that concern about the
16 level of care of the residents to any of your supervisors?

17 A. Yes.

18 Q. And who -- to whom did you raise those concerns?

19 A. My supervisors.

20 Q. Okay. So would that have been all your supervisors
21 over the course of your employment?

22 A. Yes.

23 Q. Would that be the same people that you just listed
24 for us?

25 A. Yes.

26 Q. Now, I want to talk about working more than just
27 your shift.

28 Were there times when you were asked that you had to

1 work more than just your eight hour shift?

2 A. Yes.

3 MR. REID: It's vague and overbroad as to time, your
4 Honor.

5 THE COURT: She can answer.

6 THE WITNESS: Yes.

7 Q. (By MS. CLEMENT) And did that start from when you
8 first started at the company through the end of your
9 employment?

10 A. Yes.

11 Q. Were you the only staff member that was working
12 double shifts?

13 A. No.

14 Q. Were there staff members who did more than double
15 shifts in a row?

16 A. Yes.

17 Q. Were there staff members who were working triple
18 shifts, in other words, three shifts in a row
19 consecutively?

20 A. Yes.

21 MR. REID: It's vague as to time, your Honor. And
22 overbroad. And lacks foundation.

23 THE COURT: As to time and foundation, sustained.

24 Q. (By MS. CLEMENT) So how did you -- did you know
25 that other staff members were working more than a single
26 shift?

27 A. They told me.

28 Q. And as the manager on duty, as the lead med tech

1 when the manager -- the other managers had left for the
2 evening, would you be responsible for finding replacements
3 when people called off and didn't show up?

4 A. Yes.

5 Q. And did staff members come to you and say, "Yes,
6 I'll work the shift" or "I'll work another shift"?

7 A. Sometimes.

8 Q. Did you have staff members who would be willing to
9 actually work a triple shift?

10 A. No.

11 Q. Did staff members to your knowledge, as the lead
12 med tech on the p.m. shift, work triple shifts?

13 A. Yes.

14 MR. REID: Well, it lacks foundation, your Honor.
15 And it calls for hearsay.

16 THE COURT: Sustained.

17 MR. REID: Move to strike the answer, please.

18 THE COURT: Any exception?

19 MS. CLEMENT: Well, it's an admission of a party at
20 the time of the admission.

21 THE COURT: I don't think this -- I don't think this
22 person represents -- is at that level.

23 MS. CLEMENT: Okay. I'll rephrase the question,
24 Judge.

25 THE COURT: The objection is sustained.

26 Q. (By MS. CLEMENT) Did you ever come to work the
27 day -- or strike that.

28 So you worked consecutive days in a row, true?

1 A. Yes.

2 Q. Did you ever come to work and find that one of your
3 co-workers was still working on your shift the next day and
4 had been working since you left them the night before?

5 A. Yes.

6 Q. And so that person would have worked a triple shift?

7 A. Yes.

8 Q. And did that only happen one time?

9 A. No.

10 Q. Aside from caring for residents with their
11 activities of daily living in the facility, did you have
12 concerns about having enough staff in the medication room?

13 A. Yes.

14 Q. And what were your concerns in that regard?

15 A. The amount of work we were asked to do, I didn't
16 feel like we had enough time to do them correctly.

17 Q. And when you're talking about the amount of work you
18 had to do as a med tech, do you include in that the correct
19 administration of medications to the residents?

20 A. Yes.

21 Q. Did you raise concerns about your -- I'll rephrase
22 that.

23 Were you afraid that residents were getting the
24 wrong medications because you were so rushed?

25 A. Yes.

26 Q. And were you afraid there were med errors that were
27 happening?

28 A. Yes.

1 Q. And did you see evidence of med errors in the course
2 of your employment at Emeritus Emerald Hills?

3 A. Yes.

4 Q. Can you give us some examples of what you saw in
5 terms of medication errors.

6 A. Um, there were --

7 MR. REID: It's vague -- vague as to time.

8 THE COURT: Give us a time frame, please.

9 MS. CLEMENT: Okay.

10 Q. (By MS. CLEMENT) So from when you first started
11 through the end of 2008, when Mrs. Boice left the facility.
12 Okay?

13 A. Okay.

14 Q. Can you give us some examples of medication errors
15 that you witnessed.

16 A. Medications not given. Wrong medications given.
17 Um, medications given at the wrong time.

18 Q. Was this something that you raised with your
19 supervisors, your concerns?

20 A. Yes.

21 Q. Did you raise this as far up as to a regional level?

22 A. Yes.

23 Q. Did you ever say you wanted out of the medication
24 room; you just didn't want to do this any more?

25 A. Yes.

26 Q. And why did you say that?

27 A. I didn't want to be in the med room any more because
28 it was too much work, and I was not comfortable in the med

1 room.

2 Q. And what was the response of Emeritus to the
3 concerns that you raised about wanting to go -- to leave
4 the medication room because you -- you were concerned?

5 MR. REID: That's vague, your Honor.

6 THE COURT: Sustained.

7 Q. (By MS. CLEMENT) Did you get a response to your
8 concerns that you raised about the medication room and your
9 job duties as a med tech?

10 A. They'll work on it.

11 Q. Were you ever told that you couldn't leave the
12 medication room?

13 A. Yes.

14 Q. And what were you told in that regard?

15 A. They didn't have enough staff.

16 Q. Was there ever a time where you were the only
17 med tech in the building on a single shift?

18 A. Yes.

19 Q. And was that just one day that that happened?

20 A. No.

21 Q. Was that for a period of time where the facility
22 went with only one med tech in the building?

23 A. Yes.

24 Q. And can you estimate for us how many hundreds of
25 medications you would have to pass on your shift to the
26 residents when you were the only one working?

27 A. Um, two to three hundred.

28 Q. And would it be fair to say that most of the

1 residents at Emeritus Emerald Hills during the course of
2 your employment there as a med tech needed to have their
3 medications passed to them?

4 MR. REID: It's vague. It's overbroad.

5 THE COURT: Sustained.

6 Q. (By MS. CLEMENT) During the time that you worked at
7 Emeritus as a med tech -- which was most of your time
8 there, true?

9 A. True.

10 Q. And you were responsible then for passing all the
11 medications on the assisted living side, true?

12 A. Yes.

13 Q. And there was times where you were also responsible
14 for passing all the medications in the Memory Care Unit,
15 true?

16 A. Yes.

17 Q. And there would typically be 60 residents in the
18 assisted living side?

19 A. Yes.

20 Q. And there would typically be between 15 and 18
21 residents in the Memory Care Unit?

22 A. Yes.

23 Q. Can you estimate for us in that first
24 year-and-a-half that you worked there how many residents
25 didn't have any assistance in getting their medications, in
26 other words, they just self-administered if they needed
27 them?

28 A. Maybe ten, fifteen.

1 Q. So 65 to 70 residents in the building needed to have
2 their medications passed or administered to them, true?

3 A. Yes.

4 Q. And in addition to passing medications, they also
5 had treatments, true?

6 A. Yes.

7 Q. Did the nurses that worked in the facility at
8 Emerald Hills ever ask you to perform treatments that you
9 didn't feel comfortable with?

10 A. Yes.

11 Q. Can you describe for us what those were.

12 A. Changing colostomy bags, giving insulin, dressing
13 wounds, doing suppositories.

14 Q. Were there residents in the facility who were on
15 hospice?

16 A. Yes.

17 Q. Were there residents in the facility who were on
18 colostomy bags?

19 A. Yes.

20 Q. Can you describe for us your experience with regard
21 to how it came to be that you were asked to change a
22 colostomy bag for a resident.

23 A. The resident was in the dining room and the
24 colostomy bag had leaked, so I was asked to take him to his
25 room and change it.

26 Q. Had you any experience prior to that moment in
27 dealing with a resident with a colostomy bag?

28 A. No.

1 Q. Had you ever changed a colostomy bag before?

2 A. No.

3 Q. And what was your understanding of what was the
4 contents of the colostomy bag?

5 A. That it caught bowel.

6 Q. Did you ever change this particular resident's
7 colostomy bag on any other occasions?

8 MR. REID: Objection. It's not relevant, your
9 Honor.

10 THE COURT: Overruled.

11 She can answer.

12 THE WITNESS: Yes.

13 Q. (By MS. CLEMENT) Was there any -- with regard to
14 your medication administration records, or MARs, was there
15 anyone at Emerald Hills to your understanding who was
16 following along behind you to make sure that you were
17 giving the medications correctly?

18 A. No.

19 Q. For example, when Peggy worked there, was she coming
20 through and auditing your medication administration record
21 to your understanding?

22 A. No.

23 Q. To your understanding, was either Peggy or Nancy
24 doing daily or weekly audits of your medication
25 administration record?

26 A. No.

27 Q. Was there anyone to your understanding doing a
28 daily, weekly, or even monthly audit of your medication

1 administration records to make sure the residents were
2 getting their medications correctly?

3 A. No.

4 Q. When a resident came into the facility with orders
5 for medications, who would fill out what the orders were in
6 the medication administration record?

7 A. We would.

8 Q. And you say, "We would." Do you mean the med techs?

9 A. The med techs, yes.

10 Q. Did you ever observe caregivers who were not
11 med techs passing meds to the residents?

12 A. Yes.

13 MR. REID: It's vague as to time.

14 THE COURT: Sustained.

15 Although, you know, there is a limited time frame
16 here within which she was employed.

17 Do we have an agreement that that was over the
18 period of time when Mrs. Boice was there?

19 MR. REID: She was there a lot longer. I'm sorry.
20 I didn't understand your question, your Honor.

21 THE COURT: Okay. You want to know whether or not
22 she was there when Mrs. Boice was there? In the time
23 frame --

24 MR. REID: I know she was there before and after
25 Mrs. Boice. That's -- so --

26 THE COURT: Okay. If we can deal with time frames
27 going forward, that would be helpful.

28 MS. CLEMENT: Okay.

1 Q. (By MS. CLEMENT) So during the time that you worked
2 at Emeritus, that was from September of '07 through the end
3 of April of 2010?

4 A. May, 2010.

5 Q. Oh, excuse me. May of 2010.

6 And during that time period, how many times would
7 you estimate that you saw caregivers passing medications
8 that were not med techs?

9 A. Numerous times.

10 Q. And did that happen during the time that Mrs. Boice
11 was a resident?

12 A. Yes.

13 Q. Now, let's talk about Joan Boice specifically.
14 Okay?

15 Do you remember Joan?

16 A. Yes.

17 Q. Do you remember her husband Myron?

18 A. Yes.

19 Q. And what do you remember about Joan's ability to
20 walk when she first came into the facility?

21 A. She walked with a walker.

22 Q. And how long after Mrs. Boice was at the facility
23 did you notice that she was no longer walking with her
24 walker?

25 A. One to two weeks. It was after her fall.

26 Q. And was it your observation that in order to walk
27 with her walker, Mrs. Boice needed someone to help her get
28 into her walker?

1 A. Yes.

2 Q. And was it your observation from being in the Memory
3 Care Unit that the staff in that unit did not have time to
4 help Mrs. Boice walk with her walker?

5 MR. REID: It's vague and overbroad and lacks
6 foundation.

7 THE COURT: Overruled.

8 THE WITNESS: Yes.

9 Q. (By MS. CLEMENT) Did you have concerns about
10 Mrs. Boice shortly after she came into the facility?

11 A. Yes.

12 Q. Can you tell the jury what your concerns were.

13 A. That there wasn't enough staff in the memory care to
14 take care of her and her needs like she needed them to.

15 Q. Were there documents that you -- the caregivers and
16 the med techs were supposed to be filling out when they
17 noticed something different or a concern about a resident?

18 A. Yes. Care alert.

19 Q. And did you ever fill out any care alerts for Joan
20 Boice?

21 A. Yes.

22 Q. Can you describe for the jury what type of care
23 alerts or what you wrote in the care alerts about Joan
24 Boice.

25 A. Um, I would put that she needed to be moved out of
26 the facility; she was too high a care. I would put that
27 she has sores on her bottom and on her arms and on her
28 foot.

1 Q. Did you ever hear back from any one of your
2 supervisors after you wrote your care alerts about Joan
3 Boice?

4 A. No.

5 Q. Where would the care alerts go after you filled them
6 out?

7 A. In the nurses' office.

8 Q. Did you ever help anyone else fill out care alerts
9 about Joan Boice?

10 A. Yes.

11 Q. Who else did you help fill out care alerts about
12 Joan Boice?

13 A. A memory -- memory care. Michele Riley and Lynda
14 Kittle.

15 Q. And do you have a specific recollection as to why
16 you were helping Michele and Lynda with filling out the
17 care alerts, or either of them?

18 A. They weren't very good at their spelling or putting
19 their words on paper, so they would kind of ask me what the
20 best way to put it down would be.

21 Q. Now, do you remember seeing Mrs. Boice's bedsores
22 while you -- while she was still at the facility?

23 A. Yes.

24 Q. And where do you remember seeing these sores on
25 Mrs. Boice?

26 A. On her foot and on her bottom. And there was one on
27 her arm.

28 Q. Were you -- did you ever -- were you ever asked to

1 do treatments for Mrs. Boice's bedsores?

2 A. Yes.

3 Q. And what type of treatments were you doing for
4 Mrs. Boice's bedsores?

5 A. We would put like a wound care cream on her --
6 mostly the one on her bottom.

7 Q. When you first saw the wound on her bottom, what did
8 it look like?

9 A. Um, at first, it was just like a small, round, red
10 spot.

11 Q. And then over time, how did its appearance change?

12 A. The skin started to deteriorate. The area started
13 to become like a hole.

14 Q. And did you report this to your supervisors?

15 A. Yes.

16 MS. CLEMENT: Your Honor, may I assist the witness
17 in getting Exhibit 49?

18 THE COURT: Yes.

19 MS. CLEMENT: I think the judge might need those,
20 too.

21 THE COURT: What's the exhibit number?

22 MS. CLEMENT: 49.

23 **(Joint Exhibit Number 49 was marked for**
24 **identification.)**

25 Q. (By MS. CLEMENT) Those exhibits are tabbed,
26 Miss Hitt. So if you can go to Exhibit 49.

27 Is this the hole that you saw on Mrs. Boice's
28 bottom?

1 A. Yes.

2 Q. Is this how it appeared when you saw it toward the
3 end of her stay?

4 A. Yes.

5 Q. And can you turn to Exhibit Number 52.

6 **(Joint Exhibit Number 52 was marked for**
7 **identification.)**

8 Q. (By MS. CLEMENT) Is this a sore on one of
9 Mrs. Boice's feet?

10 A. Yes.

11 Q. Did you see this sore at Emeritus?

12 A. Yes.

13 Q. And is this about how it looked then?

14 A. Well --

15 MR. REID: That's vague, your Honor.

16 THE COURT: Excuse me?

17 MR. REID: It's vague.

18 THE COURT: About then.

19 MS. CLEMENT: Oh, sorry.

20 THE COURT: Sustained.

21 Q. (By MS. CLEMENT) Is this how Mrs. Boice's foot
22 bedsore looked when you saw it at Emerald Hills?

23 A. It looks better here.

24 Q. And then looking at Exhibit 53.

25 Excuse me. Exhibit 55. Sorry. Apologize.

26 Did you see this sore on Mrs. Boice's right heel?

27 A. Yes.

28 **(Joint Exhibit Number 55 was marked for**

1 **identification.)**

2 Q. (By MS. CLEMENT) And did you see this sore when she
3 was at Emeritus, before she left the facility?

4 A. Yes.

5 Q. And is this how it looked then?

6 A. Yes.

7 Q. Exhibit 52.

8 Do you see the sore there on Mrs. Boice right foot,
9 up near her -- just on the outside of her big toe?

10 A. Yes.

11 Q. Did you see that sore there?

12 A. Yes.

13 Q. And was this how it looked at Emeritus?

14 A. No.

15 Q. How did it look when it was at Emeritus?

16 A. There was a lot more like green-yellow stuff inside
17 the hole.

18 Q. Thank you. You can put that binder back.

19 How frequently were you calling 911 during the time
20 you first started through the end of Mrs. Boice's stay?

21 A. Sometimes multiple times a shift.

22 Q. What kind of things would be sending the residents
23 out of the facility that you would be -- strike that.

24 Why would you be calling 911 typically?

25 MR. REID: Well, it's overbroad and vague, your
26 Honor.

27 THE COURT: Overruled.

28 THE WITNESS: Because of a fall.

1 Q. (By MS. CLEMENT) What were the other reasons why
2 you would call 911?

3 A. Change of condition.

4 Q. How frequently were people falling in the assisted
5 living side, where they got injured and you felt you needed
6 to call 911 as the lead med tech?

7 MR. REID: It's vague, your Honor.

8 THE COURT: She can answer.

9 THE WITNESS: Quite often.

10 Q. (By MS. CLEMENT) Did you have concerns that the
11 residents, because they were falling all the time, that you
12 needed to have more staff there to watch them?

13 A. Yes.

14 Q. Did you have concerns that the number of falls the
15 residents were having with injury wasn't safe for the
16 residents?

17 A. Yes.

18 Q. And did you tell your supervisors this?

19 A. Yes.

20 Q. And what was the response when you kept complaining
21 about understaffing and the residents having too high a
22 level of care?

23 A. For the staffing, they said it wasn't in our budget
24 to have more staff.

25 Q. And how about the residents being too high a level
26 of care, what would their response be?

27 A. Um, they really wouldn't respond to that. If we
28 asked them to reevaluate a resident because of a higher

1 level of care, it wouldn't get done.

2 Q. Did you ever see Peggy Stevenson reevaluate
3 Mrs. Boice or come look at her bedsores in response to your
4 concerns?

5 A. No.

6 Q. We talked a little bit about the training that you
7 got to be a med tech. You had that two-day training and
8 then you had a one -- two years later, you had a four-hour
9 refresher course.

10 Did you have any other training at Emeritus related
11 to something other than caring for the residents?

12 A. Um, yes. I got training on answering phones.

13 Q. And what were you taught about how to answer the
14 phones?

15 A. Um, what we would say and how to fill out the
16 inquiry call sheet on if someone is wanting to come and
17 take a tour of the building.

18 Q. Were you ever asked to give -- provide tours if a
19 resident or a family member came during your shift?

20 A. If I was there -- the only one there, yes.

21 Q. Were there ever times when you worked at Emeritus at
22 Emerald Hills, from the time you first started through when
23 Mrs. Boice left the facility, when there would only be one
24 person in the Memory Care Unit on the p.m. shift?

25 A. Yes.

26 Q. Were there times also where there would only be one
27 person on the whole -- for the entire assisted living side?

28 A. Yes.

1 Q. So only two people in the whole building?

2 A. Yes.

3 Q. And were you responsible when people called off on
4 the p.m. shift for the night shift? So let me see if I can
5 get this clarified here.

6 You would be the lead med tech on the p.m. shift.
7 So if the phone rang and an employee called in and said, "I
8 can't come to work the night shift," would you be the
9 person responsible for taking that call?

10 A. Yes.

11 Q. And would you the person responsible for trying to
12 find someone to fill in?

13 A. Yes.

14 Q. Now, at any time that you worked at Emeritus, did
15 Emeritus ever provide you with a number you could call for
16 a registry or outside service that would come in and
17 provide caregivers if no one else was available?

18 A. No.

19 Q. Were there times when you couldn't get anyone to
20 come for the night shift?

21 A. Yes.

22 Q. Were there times that you knew of while Mrs. Boice
23 was a resident where there would be nobody assigned to the
24 Memory Care Unit on the overnight shift?

25 A. Yes.

26 Q. What was your understanding of what was the typical,
27 how many caregivers would be in the Memory Care Unit on the
28 overnight shift?

1 A. One.

2 Q. And was it typical that there would be one person in
3 the Memory Care Unit and two people maximum on the night
4 shift for the assisted living side?

5 A. Yes.

6 Q. And some nights there would only be two people in
7 the whole building?

8 A. Correct.

9 Q. Did you think that was safe?

10 A. No.

11 Q. And did you talk to people from -- your supervisors,
12 telling them that you didn't think it was safe?

13 A. Yes.

14 Q. And what was their response when you told them that
15 you didn't think it was safe to leave all of those
16 residents in the building overnight with only two people?

17 A. We're working on it.

18 Q. Did that ever change?

19 A. No.

20 Q. Now, do you remember a time in 2008, during the time
21 Mrs. Boice was there, that you were asked to do something
22 even more than your --

23 Sorry. That's distracting.

24 THE COURT: I think the court attendant went out to
25 try and talk to them.

26 MS. CLEMENT: Oh, she did -- he did.

27 Thanks, Judge. Sorry about that.

28 Q. (By MS. CLEMENT) Was there ever a time when --

1 while Mrs. Boice was a resident and Peggy was the nurse,
2 that you were asked to do even more than you were already
3 doing as the lead med tech on the night shift, and that was
4 answering pages to the lobby door?

5 A. Yes.

6 Q. Can you explain to the jurors what happened that led
7 to now you had to answer pages to the lobby door.

8 A. Um, at nighttime a bum walked into the facility and
9 tried to use the restroom, so they decided that from the
10 time the last manager left the doors needed to be locked.

11 MS. CLEMENT: And at this time, your Honor, the
12 plaintiffs would seek to move in Exhibit 98, page 59.

13 **(Joint Exhibit Number 98, page 59, was marked for**
14 **identification.)**

15 THE COURT: Any objection?

16 MR. REID: No, your Honor.

17 THE COURT: All right. Page 59 is admitted.

18 **(Joint Exhibit Number 98, page 59, was received into**
19 **evidence.)**

20 MS. CLEMENT: Can you get the lights for us.

21 Thank you.

22 Erik, I think that's kind of small. Oh.

23 Q. (By MS. CLEMENT) Did you get a memo from Peggy
24 about these locking the lobby doors in November of 2008?

25 A. Yes.

26 Q. And was it true that Peggy instructed you and the
27 other caregivers that you were supposed to start answering
28 pages to the lobby door after 6:00 o'clock at night?

1 A. Yes.

2 Q. So when the concierge left -- and that was the gal
3 that sat at the front desk, right?

4 A. Yes.

5 Q. By then, the managers would all be gone, by 6:00
6 o'clock typically, true?

7 A. Yes.

8 Q. And there was a new policy to lock all the perimeter
9 doors once the concierge left?

10 A. Yes.

11 Q. And that was going to require guests and residents
12 to ring the bell. And you and the other caregivers that
13 were on the floor would have to go answer the door, true?

14 A. Yes.

15 Q. And Peggy wanted you to communicate with each other
16 by radio and decide who would answer the door, true?

17 A. Yes.

18 Q. Now, about those radios, those were walkie-talkies?

19 A. Yes.

20 Q. Did they always work?

21 A. No.

22 Q. Can -- were some of them -- well, let me ask you
23 this: When they didn't work, did you guys tell your
24 supervisors, "Hey, some of our radios aren't working"?

25 A. Yes.

26 Q. And what would the response be?

27 A. Well, we would ask for new radios, and they said it
28 wasn't in our budget.

1 Q. Did the staff ever try to do anything to raise money
2 to get new radios?

3 A. Yes.

4 Q. And what did you guys try to do?

5 A. Bake sale.

6 Q. And what happened in response to your --

7 THE COURT REPORTER: I need you to repeat it,
8 Counsel.

9 Q. (By MS. CLEMENT) What was the response to the
10 request to have a bake sale so that you could buy radios
11 that worked?

12 A. Um, we weren't allowed to have a bake sale.

13 Q. So was it the expectation of Peggy that the resident
14 or guest wouldn't have to wait more than five minutes
15 before the door would be answered by you or one of your
16 coworkers?

17 A. Yes.

18 Q. And she expected you and the med techs to be aware
19 of each other's locations at all times?

20 A. Yes.

21 Q. Was that feasible? Was that practical? Was that
22 possible?

23 A. No, not really.

24 Q. And why wasn't it possible for you and the other
25 med techs to know where each other was at all times?

26 A. I had three floors to tend to. And the memory care
27 med tech, not only was she passing meds, but also giving
28 showers and dressing residents or giving residents food.

1 So we were moving consistent -- constantly.

2 Q. So on the p.m. shift, it wasn't just putting
3 residents to bed. That shift started at 2:00 and ended at
4 10:00, true?

5 A. Yes.

6 Q. So you had to take all the residents that needed
7 help down on the one elevator to the dining room?

8 A. Yes.

9 Q. How many residents could fit at a time in that -- in
10 that elevator?

11 A. Six.

12 Q. And how about if they had wheelchairs?

13 A. Three.

14 Q. And did you have residents in the assisted living
15 side that were in wheelchairs?

16 A. Yes.

17 Q. Did you have residents on the assisted living side
18 that needed more than just to be told to come down; they
19 had to be guided down to the dining room?

20 A. Yes.

21 Q. Did you have residents in the assisted living side
22 that needed help with eating? In other words, they needed
23 someone to either cut up their food or cue them to eat?

24 A. Yes.

25 Q. So in Peggy's memo, she says that all resident
26 assistants should not be busy with residents at one time.

27 Was that true?

28 A. No.

1 Q. She said that one resident assistant should be
2 available to answer pages at any time.

3 Was that true?

4 A. No.

5 MS. CLEMENT: Thank you.

6 Thanks, Erik.

7 Q. (By MS. CLEMENT) When you would be called away to
8 answer the front door, who would be watching your
9 residents?

10 A. The other RAs.

11 Q. Could you physically be on one -- more than one
12 floor at any given time?

13 A. No.

14 Q. Were the residents all like in open rooms where you
15 could -- like if you stood out in the hallway, you could
16 see into everybody's room and see all the residents?

17 A. No.

18 Q. Were they all in little enclosed apartments?

19 A. Yes.

20 Q. Did you have residents in the assisted living side
21 that needed more than two people to help them get in and
22 out of bed?

23 A. Yes.

24 Q. Did you have residents who sometimes needed three or
25 four people to get them in and out of bed?

26 A. Yes.

27 Q. During your shift when you needed help with showers,
28 did you sometimes have to ask the maintenance man, Chris,

1 to come help you give showers?

2 A. I personally never did.

3 Q. Did you witness that happening at the facility?

4 A. Yes.

5 Q. Now, the resident assistants on the p.m. and night
6 shift, did they have more duties besides just caring for
7 the residents?

8 A. Yes.

9 Q. Did they have to do laundry?

10 A. Yes.

11 Q. Did they have to do housekeeping?

12 A. Yes.

13 Q. Did they have to -- during the time Mrs. Boice was a
14 resident, did they have to go get the food from the kitchen
15 and bring it out to the residents?

16 A. Yes.

17 Q. Did they have to take -- for example, in the
18 assisted living side, did they have to take orders that the
19 residents wanted for their food, just like at a restaurant?

20 A. Yes.

21 Q. And then they had to go back to the kitchen?

22 A. Yes.

23 Q. And that was happening even when there was only two
24 people in the whole building?

25 A. Yes.

26 Q. Were you ever frightened that if there were
27 emergency situations that either could or did happen in the
28 facility where you wouldn't be able to get the residents

1 out?

2 A. Yes.

3 MR. REID: It's compound and vague, your Honor.

4 THE COURT: In this context, it's okay. Objection
5 overruled.

6 Q. (By MS. CLEMENT) Can you describe for the jury any
7 incident where you specifically had a serious concern about
8 not being able to evacuate the residents, from the time you
9 first worked there through the time that Joan was in the
10 building.

11 A. I was working a NOC shift and I was walking the
12 halls and I smelled gasoline or a gas-type smell. So I
13 called the maintenance man. And we had to call the fire
14 department, and they shut off our gas because we had a gas
15 leak.

16 Q. And at that time, how many people were working in
17 the building?

18 A. Me and someone in the memory care.

19 Q. Did you feel like you would have been able to get
20 all those residents out of the building with just the two
21 of you?

22 A. No.

23 Q. Now, I want to talk about activities.

24 One of your job duties on your job description says
25 you're supposed to assist with activities.

26 A. Yes.

27 Q. And tell us about activities that you saw going on
28 in the Memory Care Unit during the time Joan -- strike

1 that.

2 Was there an activities director for the Memory Care
3 Unit?

4 A. No.

5 Q. And when Joan Boice was a resident, did you see
6 activities going on in the Memory Care Unit?

7 A. No.

8 Q. Did you ever -- did you and the staff ever try to do
9 special activities for the residents?

10 A. Yes.

11 Q. Can you describe for the jury any -- any instance
12 where you tried to do a special party for the residents?

13 A. Um, it was the first day of May, so I brought in a
14 PVC pipe and a whole bunch of ribbon. And we went out into
15 the backyard and we did a Maypole. That came out of my own
16 pocket.

17 Q. Did you ever try to do parties for the residents and
18 were told, no, you couldn't do it?

19 A. Yes.

20 Q. Can you describe for the jurors any examples of
21 that.

22 A. Um, the staff had come up with a holiday party -- or
23 a Hollywood party. We wanted the staff to dress up like
24 the theme of when they were growing up, like the famous
25 people, and like have this big 'ole party. And we were
26 told no.

27 Q. And what was the reason as to why you couldn't give
28 this Hollywood party and dress up like the actors and

1 actresses from the olden days?

2 A. It wasn't in the budget and it was not professional.

3 Q. Were the staff in the Memory Care Unit -- in
4 addition to all their other job duties, were they also
5 supposed to be providing activities to the residents?

6 A. Yes.

7 Q. All the time that you were over there in the Memory
8 Care Unit, did you ever see Joan Boice engaged in any
9 activities?

10 A. No.

11 Q. Did you ever complain about being told that you had
12 to work a double shift?

13 A. Yes.

14 Q. Now --

15 MR. REID: It's vague as to time, your Honor.

16 THE COURT: Sustained.

17 Q. (By MS. CLEMENT) Over the course of your
18 employment, from when you first started through the time
19 that Joan Boice was a resident, did you complain about
20 having to work double shifts?

21 A. Yes.

22 Q. Why did you not want to work a double shift
23 sometimes?

24 A. Um, I'm tired. I have to go home. My shift would
25 end at 6:00. I would get home at 6:30. My husband would
26 leave at 6:45. Then at 7:00 o'clock, I would have to get
27 up my son for school. And then I had to take care of my --
28 my toddler all day long and then go to work the next day.

1 Q. So you're talking about when you came to work on a
2 p.m. shift at 2:00, and you worked until 10:00, then you
3 would be expected, if you had to work a double, to work
4 from 10:00 until 6:00 a.m. the next day?

5 A. Yes.

6 Q. Did you feel it was safe for you and the residents,
7 for you to be working these double shifts?

8 A. No.

9 Q. Now, did you ever use the Ethics First Hotline?

10 A. Yes.

11 MR. REID: It's vague as to time, your Honor.

12 THE COURT: Well, I think what we can do is -- the
13 question can be general and then get more specific.

14 Go ahead.

15 Q. (By MS. CLEMENT) Did you ever use the Ethics First
16 Hotline?

17 A. Yes.

18 Q. And why did you use the Ethics First Hotline?

19 MR. REID: It's vague as to time, your Honor.

20 THE COURT: Overruled.

21 THE WITNESS: Um, I used it when I felt like I was
22 being mistreated. I used it when I felt like no one was
23 listening to my concerns about the residents. I used it
24 quite a bit.

25 Q. (By MS. CLEMENT) Now, why did you leave Emeritus in
26 May of 2010?

27 A. I was fired.

28 Q. And were you told why you were fired?

1 A. They said --

2 MR. REID: Objection. It's hearsay. It's
3 irrelevant. Nonresponsive as asked.

4 THE COURT: Overruled.

5 THE WITNESS: I was told that I was fired for a med
6 error.

7 Q. (By MS. CLEMENT) And what was the nature of the med
8 error that you told you were fired over?

9 A. I gave a medication on the wrong day.

10 Q. And had that particular med error ever occurred
11 before?

12 A. No.

13 Q. Had you actually observed in reviewing the
14 medication administration records over the course of your
15 employment many, many, many times that there were med
16 errors?

17 A. Yes.

18 MR. REID: It's vague and argumentative.

19 THE COURT: There were one too many manys.

20 MS. CLEMENT: Okay.

21 Q. (By MS. CLEMENT) Did you observe over the course of
22 your employment there were many times that there were
23 medication errors in the MARs?

24 A. Yes.

25 Q. Was that pretty much a weekly thing, that you saw
26 medication errors in the MARs?

27 A. Yes.

28 Q. Now, prior to being fired for this med error, had

1 you recently prior to that made a complaint on the Ethics
2 Hotline?

3 A. Yes.

4 MS. CLEMENT: At this time, your Honor, the
5 plaintiffs would seek to move into evidence Exhibit Number
6 284, Ethics Hotline regarding Miss Hitt.

7 **(Joint Exhibit Number 284 was marked for**
8 **identification.)**

9 THE COURT: 284 is a separate document you mean?

10 MS. CLEMENT: Yes.

11 THE COURT: Can I get 284.

12 THE CLERK: It's actually on your desk.

13 THE COURT: Oh, that's the one I just got. Okay.

14 Thank you.

15 Any objection?

16 MR. REID: Yes, your Honor. Relevance and 352.

17 THE CLERK: It goes in the binder.

18 THE COURT ATTENDANT: Yeah. Just hold onto it.

19 THE COURT: Overruled.

20 MS. CLEMENT: Terrance, would you mind getting the
21 lights for us.

22 THE COURT: 284 is admitted.

23 **(Joint Exhibit Number 284 was received into**
24 **evidence.)**

25 MS. CLEMENT: So can everyone read that? Big
26 enough?

27 JUROR NUMBER ELEVEN: Not very well.

28 MS. CLEMENT: Not very well?

1 Okay, Erik. Can you do something about that.

2 (Pause.)

3 MS. CLEMENT: Is that any better? Okay.

4 Q. (By MS. CLEMENT) So, how did you do this Ethics
5 First Hotline? Did you do it by phone, or did you type it
6 in on the -- on an e-mail or Internet?

7 A. I went to the website.

8 Q. Okay. And is that typically how you made your
9 Ethics First complaints?

10 A. Yes.

11 Q. And so on April 25th, can you read for us what you
12 entered as a complaint.

13 A. "I feel like I was mistreated by the ED. On April
14 23rd, 2010, Friday night our NOC shift med tech called off.
15 And after calling other employees to cover and was
16 unsuccessful, my coworker called our ED. After my coworker
17 explained her situation on why she couldn't do it, she
18 asked me -- she asked to talk to me. She asked -- she
19 asked me what could she do to have me to work. I replied
20 nothing. Because the last thing I was promised by my
21 supervisor, it was later denied. She asked if that was the
22 only thing, and I said no. Then she continued to tell me
23 that I was not a team player; I wouldn't step up to the
24 plate. She also said that she saw that I recently applied
25 for the wellness coordinator job, and that I would never
26 get that job if I didn't do it. I told her that I was
27 already turned down for the job and that I have stepped up
28 to the plate double the times than any other med tech. She

1 then told me I was a mandated reporter and I could not
2 leave until there was coverage. I am worried that this
3 kind of treatment will continue, and especially since this
4 incident." (As read.)

5 MS. CLEMENT: And can you go to the next little
6 section about "resident's suggested memory."

7 Thank you.

8 Q. (By MS. CLEMENT) And what did you tell the Ethics
9 First Hotline as to what remedy you were suggesting?

10 A. Um, I talked to a manager, and they told me to call
11 Ethics Hotline. Um --

12 Q. Prior to this, writing in on the Ethics Hotline, did
13 you speak to anyone at corporate about being forced to work
14 a double?

15 A. Yes.

16 Q. Who did you speak with?

17 A. Diana Engles.

18 Q. And she was what you understood to be the regional
19 memory care director, nurse?

20 A. Yes.

21 Q. Okay. And what did you tell Miss Engles?

22 A. That I've been forced to work double shifts a lot
23 and I can't do it all the time because I have children at
24 home; that I need to be able to take care of them. And she
25 said -- she said that I wasn't -- that I shouldn't have to
26 stay. No one can force me to stay, to work.

27 Q. Did you tell her that they were -- that you had been
28 threatened?

1 A. Yes.

2 Q. Did you tell her that you'd been threatened; that
3 because you were a mandated reporter you would be
4 neglecting the residents if you didn't work a double?

5 A. Yes.

6 Q. And what did she say in response?

7 A. She told me that wasn't true.

8 MS. CLEMENT: Can you go to the next highlighted
9 section, page two.

10 Q. (By MS. CLEMENT) So did you get this response from
11 Christina Houck at corporate headquarters the next day,
12 after you made your Ethics First complaint?

13 A. Yes.

14 Q. And then did you hear back from them again before
15 you were fired?

16 A. No.

17 Q. And had you ever seen this?

18 Did Audrey Withers ever come and tell you that you
19 were being terminated due to continuing med errors and poor
20 performance?

21 A. No.

22 MS. CLEMENT: And can you go to the next section.

23 Q. (By MS. CLEMENT) So then a month after you made
24 your complaint, was this the next time you got a reply?

25 A. Yes.

26 Q. And did this Christina Houck tell you that she was
27 thanking you for contacting Ethics First, and that we take
28 all concerns very seriously, and we've been looking into

1 these concerns. And Mary Winters, the regional director of
2 operations, was going to speak with you while in the
3 community, but you were not in the community that day. And
4 that they would address your concerns accordingly. Should
5 you want to speak with her directly, you could reach me
6 at -- it says it's from Audrey Withers.

7 Do you see that?

8 A. Yes.

9 Q. Okay. But on the document, it says that Christina
10 Houck -- it says Christina Houck from corporate sent the
11 e-mail, true?

12 A. Yes.

13 Q. Did Mary Winters ever contact you, the regional
14 director of operations, and tell you that she wanted to
15 meet with you?

16 A. No.

17 Q. Did anyone ask to meet with you about the concerns
18 you raised, about being forced to work a double and being
19 told that you'd be reported for neglecting the residents if
20 you didn't stay?

21 A. No.

22 Q. Did you reply the same day?

23 A. Yes.

24 Q. And can you tell the jury what you wrote.

25 A. "Well, since then I have been terminated because of
26 a med error, which I totally understand. What I am
27 wondering about is my coworker, Tieunda Morgan, which
28 worked with me on pm's, had multiple med errors but, yet,

1 she is still working and wasn't even suspended like I was.
2 I feel like that since that ED and I don't see eye to eye,
3 that she was just looking for a reason to get me out of
4 there. If one consequence is enforced on one employee,
5 then the same should be for all employees. I will be
6 investigating this further myself. But if you have any
7 information that could help me further understand my
8 situation, I would greatly appreciate it." (As read.)

9 Q. Thank you.

10 MS. CLEMENT: You can get the lights.

11 Q. (By MS. CLEMENT) During the course of your
12 employment at Emeritus, up through the time Mrs. Boice was
13 a resident at the facility, were you told by your
14 supervisors that you were not to tell the families you were
15 understaffed?

16 A. Yes.

17 Q. What were you told to do by your supervisors if the
18 State came into the building?

19 A. Um, we were told to make it look good. Always
20 smile. Always say "Hi." Shake their hands. Look busy.

21 Q. Were you told anything specifically about what you
22 could or could not say to the State when they came into the
23 building?

24 A. Oh, that we were short staffed and that we didn't
25 have -- we had high acuity residents.

26 Q. So I want to be clear.

27 Were you told by your supervisors that when the
28 State came in you were not to tell them that you were

1 understaffed?

2 A. Yes.

3 Q. And you were not to tell them there were high acuity
4 or high care need residents in the building?

5 A. Yes.

6 Q. Was there ever a time while you worked at Emeritus
7 where you felt that the facility was adequately staffed to
8 meet the needs of the residents?

9 A. No.

10 Q. Was there ever a time at Emeritus where they stopped
11 admitting new residents?

12 A. No.

13 Q. Were you constantly worried while you worked at
14 Emeritus that staff weren't going to show up and you'd be
15 the only one there?

16 A. Yes.

17 Q. Why did you stay there as long as you did?

18 A. The residents.

19 Q. And why do you say "the residents"?

20 A. I loved them very much.

21 Q. When you were fired were you told that you couldn't
22 go back and see the residents again?

23 A. I'm not allowed in the building.

24 Q. Did you ever witness anything at work which you
25 thought was cruel or teasing to the residents?

26 A. Yes.

27 MR. REID: It's vague as to time, your Honor.

28 THE COURT: Ladies and gentlemen, I think we're at

1 our morning break. Leave your notebooks on the chairs.
2 Remember the admonitions.

3 Let's take a short break, 15 minutes, because I'm
4 going to let you go a little early for lunch today, as we
5 have a hearing in this matter at 11:30. So be back,
6 please, ready to go, at a quarter to.

7 And, Miss Hitt, you can step down. I'll need you
8 ready to go outside the courtroom doors at a quarter to.

9 THE WITNESS: Okay. Thank you very much.

10 THE COURT: You're welcome.

11 **(The following proceedings were then had in open**
12 **court, outside the presence of the jury.)**

13 THE COURT: All right. Mr. Reid, this individual
14 has a limited tenure at Emeritus, from September '07 to
15 April of 2010. Because we've had a number of
16 conversations, the period of time, of course, when
17 Mrs. Boice was there is directly relevant. And perhaps
18 some period of time thereafter may be relevant for
19 ratification and continuing conduct. Some of it relevant
20 to the prima facie case; some of it perhaps relevant to the
21 Phase Two on this matter.

22 So when you keep saying "Vague as to time," given
23 the limited time frame, I'm having difficulty here.

24 What are you concerned about?

25 MR. REID: I'm concerned about events that have
26 occurred well after Mrs. Boice is gone, that don't relate
27 to the kinds of issues that have been raised in this case,
28 getting, you know, brought up in front of the jury.

1 It's -- and I'm objecting as to time because I don't
2 know -- you know, she just asked the question about whether
3 someone was teased and taunted. And I don't know whether
4 this is at the end of her tenure, if it's closer in time.
5 Maybe it's more -- maybe my better objection might have
6 been relevance and 352. But I thought of timing because I
7 don't know when this specific incident that they're talking
8 about is going to occur.

9 THE COURT: Okay. Miss Clement, he's continuing to
10 make these objections.

11 Is there -- is there a reason why you feel it's not
12 necessary to hone in a little bit more on the time frame?

13 MS. CLEMENT: Well, one, you know, the -- a lot of
14 this stuff isn't documented and she may not recall the
15 exact date that something happened. But this tenure, from
16 September through early May of 2010, is within the
17 tenure -- or the time period that we have already had lots
18 of evidence come in based upon the Court's ruling on the
19 defendant's motions in limine.

20 In fact, the 2000 -- the Vice President of Quality
21 Services' reports are coming in from 2007 through the end
22 of 2010. I mean, over and over and over throughout this
23 case, the evidence has been coming in through the end of
24 2010. And I thought that was our cutoff time period for
25 what is relevant to meet our minimum burden of proof under
26 the Elder Abuse Act.

27 It's a pattern and practice of understaffing.
28 That's the whole case. And it happened before Mrs. Boice;

1 it happened while she was there; and it happened -- for
2 this Phase One of the trial -- up through at least the end
3 of 2010. And that's what we're talking about.

4 THE COURT: I agree it would be helpful for purpose
5 of analysis if the witness could attempt to answer, you
6 know, was it before, during, or after, so that we could
7 analyze it a little more and see where it fits.

8 I also think that would avoid some of these "vague
9 as to time" issues. And then we can get more to the crux
10 of the matter, which is, *Is this relevant to this case?*
11 *And, if so, why?*

12 Some of the objections, you'll note, I'm not waiting
13 to hear from Miss Clement on because the Court can see
14 almost immediately how it would be relevant to either
15 credibility or otherwise of the witness in the case.

16 So you may -- obviously, you need to make your
17 objections but -- perhaps I'm suggesting that you be a
18 little more circumspect on the objections.

19 MR. REID: Yes, your Honor.

20 THE COURT: Let's take our break. I'll see you back
21 at a quarter to.

22 MS. CLEMENT: Thank you, Judge.

23 (Recess.)

24 (Change of court reporters.)

25 ---o0o---

26

27

28

1 **(The following proceedings were held in open court, in the**
2 **presence of the jury:)**

3 COURT ATTENDANT: At this time come to order.
4 Department 45 is once again in session. The honorable Judge
5 Judy Hersher now presiding. You may be seated.

6 Q (By MS. CLEMENT) Ms. Hitt, when we took our break we
7 were just getting to a question about a incident that you
8 had observed that caused you some concern, um, about a
9 resident being teased. Um, when -- when approximately do
10 you think that incident occurred?

11 A In 2008.

12 Q And can you tell the jury what was it that you
13 observed that made you concerned?

14 MR. REID: Objection, relevance and 352.

15 THE COURT: What is the relevance?

16 MS. CLEMENT: It goes directly to the, um, issue of
17 mandated reporting, your Honor.

18 THE COURT: Do you wish to respond?

19 MR. REID: No, your Honor.

20 THE COURT: Overruled.

21 You can answer.

22 THE WITNESS: Um, there was a male resident in our
23 sitting area and a few staff members were in there lifting
24 up their pant legs, um, and trying to arouse him, um, trying
25 to, um, make him go woo, woo, show me more, show me more.
26 Um, it was on the PM shift.

27 So the next day I went in, and at that time we had no
28 ED so a, um, regional or corporate person was, um, our

1 acting ED, and I told it directly to her and, um, nothing
2 further of that incident was taken care of.

3 Q (By MS. CLEMENT) Were the caregivers, um, to your
4 understanding, suspended at all?

5 A No.

6 Q Do you remember during the course of your employment,
7 um, in 2009 having a evaluation?

8 A Yes.

9 Q And do you remember that your evaluation was good?

10 A Yes.

11 MS. CLEMENT: And at this time, your Honor, the
12 Plaintiffs would seek to move into evidence Exhibit Number
13 98, pages 55 through 57, Ms. Hitt's evaluation.

14 MR. REID: No objection, your Honor.

15 THE COURT: All right. Pages 55 through 57 are
16 admitted.

17 **(Joint Exhibit 98, pages 55 through 57 were admitted into**
18 **evidence.)**

19 THE COURT: May we get the lights, please, Terrance?

20 MS. CLEMENT: Okay. Can you start at the top so we
21 can see the date of it, Erik? I'm sorry.

22 Q (By MS. CLEMENT) Do you remember the only evaluation
23 you got at Emeritus was in October of 2009, about two years
24 into your employment?

25 A Yes.

26 Q And was that Rich Lee that was -- that gave you that
27 evaluation?

28 A Yes.

1 Q And, um, Rich said that you were always pleasant with
2 the residents, I guess, and stays calm in challenging
3 situations.

4 Do you think that is a accurate description of how you
5 were at work?

6 A Yes.

7 Q And if you can go to page 57, Erik? And, um, can you
8 do the top part? I forgot to tell you to do that first.

9 So this is the section called "areas for growth."

10 Can you highlight it too for us? Thanks.

11 So, um, Rich identified some areas for growth for you
12 in terms of, um, remembering to chart the PRN, or as-needed
13 medications on the back of the MARs; is that right?

14 A Yes.

15 Q And he wanted you to attend a refresher course that
16 was going to be held; true?

17 A Yes.

18 Q And that was the course that we already saw that you
19 did; true?

20 A Yes.

21 Q And then, um, he noted also that you were functioning
22 as a supervisor on the PM shift when no other managers were
23 in the community and you continue to hold co-workers
24 accountable per Emeritus policy and the support of
25 management team.

26 Is that something you felt you did?

27 A Yes.

28 Q Okay. Next down.

1 And as a result of that you got a, what, two percent
2 increase in your pay?

3 A Yes.

4 Q And at that time were you making about 10 dollars and
5 40 cents an hour?

6 A Yes.

7 Q Thanks, Erik.

8 When you come into the Emeritus at Emerald Hills
9 facility is there somewhere painted on the wall, um, this:
10 "Our family is committed to yours"?

11 A Yes.

12 Q Were you ever asked to participate in a survey to come
13 up with that slogan, "our family is committed to yours"?

14 A No.

15 Q What was your understanding of "what our family is
16 committed to yours" meant?

17 A Um, that's just a slogan to bring in more residents.

18 Q Did you feel that Emeritus was committed to the
19 residents that lived at Emerald Hills?

20 A No.

21 Q Would you ever recommend Emeritus to a family member?

22 A No.

23 Q To anyone?

24 A No.

25 Q Did you ever get a write-up?

26 A Yes.

27 Q And did that write-up happen some time in, let's see,
28 January of 2009?

1 A Yes.

2 Q Is that the only time that you know that you were
3 written up?

4 A No.

5 Q And this particular write-up that you know about, um,
6 can you tell the jurors what the circumstances were for that
7 write-up?

8 A I was coming on shift for a noc shift, um, I would be
9 the only -- I was the med tech slash caregiver for the AL
10 side. Um, they told me that I needed to give resident 329 a
11 shower. This resident is between 3 and 400 pounds. Um, I
12 told them --

13 Q You don't have to use the bad word.

14 A I told them, F no, I was not going to give this
15 resident a shower unless Rich came in and answered the pages
16 while I did it.

17 Q Um, who is the person who reported you?

18 A Um, Mary S.

19 Q Mary S., was that a co-worker?

20 A Yes.

21 Q Was she involved in the incident you described earlier
22 about showing, um, her legs off to the resident trying to
23 arouse him?

24 A Yes.

25 Q Did Rich come in and answer the pagers that night?

26 A No.

27 Q Were you the only person working on that side of the
28 building that night?

1 A Yes.

2 Q Can I ask you how much you weigh?

3 A 105 pounds.

4 MS. CLEMENT: No further questions. Thank you.

5 MR. REID: Good morning, ladies and gentlemen.

6 REDIRECT EXAMINATION

7 BY BRYAN R. REID, Attorney at Law, Counsel on behalf of the
8 Defendants:

9 Q Good morning, Ms. Hitt.

10 A Good morning.

11 Q We -- I'm Bryan Read. We have never met; true?

12 A True.

13 Q Um, has there been a number of occasions where you
14 have been contacted by, um, an investigator and asked some
15 questions about, um, your experiences at Emeritus?

16 A Yes.

17 Q And, um, when -- when you were -- in fact, you were
18 contacted over the weekend, correct?

19 A Correct.

20 Q And in those exchanges with the investigator, Mr. --
21 do you remember his name?

22 A Bob Blaskey (phonetic).

23 Q Okay. You say it better than I do.

24 Um, did you -- were you honest with him?

25 A Yes.

26 Q You've talked about a lot of, um, a lot of
27 information, and, um, I want to -- if it -- I would like to
28 focus down on that time frame in the fall of 2008 if we can,

1 okay?

2 A Okay.

3 Q And can you tell the jury who were the -- the managers
4 at, um, Emerald Hills in the fall of 2008?

5 A Um, I believe Alicia Parga was still there. Um, Chris
6 was the maintenance director. I think Nancy Cordova was the
7 ED, and Peggy Stevenson was the nurse.

8 Q And could you tell the jury what your -- what you
9 thought of Peggy Stevenson as -- as your nurse supervisor?

10 A I liked her.

11 Q Why?

12 A We got along pretty good. She treated me with
13 respect.

14 Q Um, and did you -- what, if any, complaints did you
15 have about Nancy's skills as -- as a nurse?

16 A Nancy's?

17 Q I'm sorry. Peggy's? I apologize.

18 A Um, I'm not very -- I wasn't very aware of her skills.
19 Um, she didn't -- I didn't see much of her using her skills
20 while I worked with her. Um, um, she told me some of her
21 experiences that she had previously worked. That's pretty
22 much all I knew.

23 Q How about, did you ever have any observations about
24 Peggy Stevenson's, um, interactions with the residents?

25 A Sometimes.

26 Q And can you tell the jury what -- what observations
27 you had in that regard?

28 A Um, well, the residents would come into her office

1 sometimes and they would talk or, um, in the hallways they
2 would talk or, um, there would be times where they would
3 talk in the dining room.

4 Q Okay. And did you ever make any observations about,
5 um, Peggy Stevenson's commitment to the residents?

6 A Commitment?

7 Q Yeah. Let me ask it a different way.

8 Did you ever form any opinion as to, um, whether Peggy
9 cared about the residents?

10 A Maybe somewhat, but I don't really believe she was
11 there for the residents.

12 Q Why would you say that?

13 A She was -- she would spend a lot of time in Nancy
14 Cordova's office with the door shut.

15 Q In the fall of 2008, um, the time frame I'm asking you
16 to focus on, um -- do you understand that's the time frame
17 in which Ms. Boice was at Emerald Hills?

18 A Yes.

19 Q And in that time frame, um, what kind of, um,
20 interactions -- beyond the med tech duties, what kind of
21 interactions were you having with the residents at that
22 time?

23 A Um, I would go out and assist with dining room, um,
24 normal daily activities. Sometimes I would help with bingo.
25 Um, on the memory care side I would, um, go in there, help
26 them bathe and daily activities. Um, I would turn on the
27 music and we would sing songs and I would get out coloring
28 pages and we would color together.

1 Q It's -- it seems like that is something you enjoyed;
2 is that -- is that true?

3 A Yes.

4 Q And -- and tell the jury why that part of the job, um,
5 was, um, something you enjoyed?

6 A Doing activities?

7 Q Right.

8 A Um, just the -- to see the residents' reaction, um,
9 the -- the -- they definitely liked the singing part and,
10 you know, they would just go all out on the singing. It was
11 really fun to interact with them that way and see them
12 smile.

13 Q Now, um -- so in the fall of 2008 you were doing these
14 things. Were you the only one that was doing those things
15 in the Memory Care Unit?

16 A No.

17 Q Who else did you see doing those kinds of, um,
18 activities with the residents?

19 A Michelle Riley and Heather Dunlap.

20 Q And tell the jury what you recall observing Michelle
21 and Heather doing?

22 A Um, they would do, um, where we would bounce a balloon
23 up in the air, like all of the residents would take a turn
24 to hit it. Um, they would dance. We would have a resident,
25 um, play the piano for us and everybody would sing along or
26 listen, and, um, we would take turns, um, telling stories of
27 what we remember of our past.

28 Q Um, now, in the fall of 2008 were you ordinarily -- I

1 want to understand, were you ordinarily assigned to be the
2 med tech on the assisted living side; is that your normal
3 assignment?

4 A Correct.

5 Q Okay. How often did you, in the fall of 2008, did you
6 find the, um -- or how often in the fall of 2008 were you
7 able to go to the memory care side and do the kinds of
8 things you are talking about?

9 MS. CLEMENT: Objection, vague as to "do the kinds of
10 things you're talking about."

11 THE COURT: Are we talking about activities?

12 MR. REID: Right.

13 THE COURT: Okay. Please rephrase.

14 Q (By MR. REID) How often, in the fall of 2008, were
15 you finding the time to go do the activities, um, in the
16 memory care area?

17 A Usually during my 10-minute break, um, or when they
18 would call me over, um, so they could go take showers or do
19 bathroom assistance before like a meal time.

20 Q Now, how would they call you over?

21 A Through the radio.

22 Q And when you would get a radio call asking for you to,
23 um, provide some assistance at memory care, what was your
24 reaction when you would get a call like that?

25 A Um, I would usually tell them I would be there as soon
26 as I can.

27 Q And how soon would that be, if you could say?

28 A It depended on the day.

1 Q Okay. Um, now, would -- would the radio call go to
2 everybody working in the building at that time or -- or
3 would it just go specifically to you?

4 A It would go to everybody.

5 Q And when a radio call goes over for some assistance in
6 memory care, was there a protocol as to how to respond or
7 who should respond?

8 A Yes.

9 Q And what was the protocol?

10 A If they called a certain person's name we would just
11 use, um, needs assistance in memory care or we would use,
12 um, need assistance ASAP. We wouldn't use residents' names,
13 we would use the room number that they were in.

14 Q And when the call comes through and you're over on
15 the -- on the assisted living side, um, is -- is everybody
16 that's working expected to respond in some way to the call?

17 A If -- if someone's not calling for a certain person,
18 if someone just says, I need assistance in 315, then they
19 -- anybody that is working on that side is expected to
20 respond, yes.

21 Q Okay. So I'm trying to get a -- a -- I'm trying to
22 picture in my mind what the person -- and you said "315",
23 that would be on the assisted living side, right?

24 A Yes.

25 Q So I'm wanting you to focus on someone in memory care
26 getting on the radio and asking for assistance, okay?

27 A Okay. So if it was someone in memory care calling to
28 the assisted living side, they would say, can I have someone

1 from assisted living side come assist me in 105.

2 Q Okay. And then anybody working on assisted -- would
3 there be a specific person that would be the first person
4 that would be expected to respond or could it be anybody
5 working on the assisted living side?

6 A Usually it could be anybody.

7 Q And what would the person making the call hear when
8 they say, I would like some assistance, what would they hear
9 coming back on the radio?

10 A Um, whoever would choose to go or needed to go would
11 be like, um, this is Jenny, um, I'll be there as soon as I
12 can.

13 Q And when you heard -- when you would hear that someone
14 in memory care was asking for some assistance, what was your
15 mind-set; did you want to go or did you not want to go?

16 A I wanted to go.

17 Q For the reasons you talked about?

18 A Yes.

19 Q How about your co-workers in the fall of 2008, did you
20 have any observations about whether they were either -- what
21 their mind-set was in terms of going to the memory care
22 area?

23 A Most of the caregivers on the AL side did not feel
24 comfortable working with, um, Alzheimer's and dementia
25 patients.

26 Q Okay. And -- and would -- did you consider that when
27 you would respond to the memory care, um, assistance calls?

28 A Yes.

1 Q So during your break and when the, um, memory care
2 folks put in a call for assistance that you told us there
3 were times you would go over to memory care, were there any
4 other times that you would find yourself going to memory
5 care?

6 A When I was doing my MARS at the end of the night.

7 Q And -- and tell us about that, how did that work?
8 Tell us that process.

9 A Well, at the end of the night after I passed my last
10 medication, um, I would -- would get all of my MARS books
11 and my like daily response book. If there is any incidents
12 I would -- we would write it down to let the previous or the
13 next shift know what happened. So it was about five books
14 and any incident forms that I needed to have I would have
15 that. Um, and I would walk right through the doors -- the
16 med room was right next to the Memory Care Unit, so I would
17 walk through the doors and the dining room was to the right,
18 so I would go in there and sit down at the dining room table
19 and I would just fill out my books as I watched the door or
20 if any residents come in, I would usually get them a snack
21 or talk with them while I'm doing my books.

22 Q Okay. Um, now, were you trained that you were -- was
23 it -- were you told whether that was an appropriate thing to
24 do or not appropriate to do, your MARS in the memory care
25 area?

26 A No.

27 Q Why did you go do it in there?

28 A To go help out the caregivers in the memory care.

1 Q So we are talking -- I think you said this is around
2 the end of your shift?

3 A Yes.

4 Q Which would be approximately what time then?

5 A 10:00, 10:30.

6 Q And, um, were you -- did you find -- tell us about
7 whether you were able to get your job done in terms of the
8 MARs while sitting in the Memory Care Unit?

9 A Sometimes it was challenging.

10 Q Okay. Why is that?

11 A Um, we had residents in the memory care that would
12 like to, um, go through the memory care doors, so we would
13 have to come up with situations to make them not want to go
14 through, redirect them back to a different area.

15 Q Well, let's talk about those memory care doors. Can
16 you explain to the jury how those doors worked?

17 A Well, it's a double -- double door and it's just a
18 push door, anybody could go through it. If you didn't put a
19 code in then when you went through it an alarm would go off.

20 Q Um, and did you use -- did you say that you would
21 redirect them?

22 A Yes.

23 Q Tell the jury what redirecting is.

24 A Um, getting their mind on something else, say, oh,
25 let's -- let's go in the dining room and have a cookie or,
26 um, hey, can you take me to your room, I forgot where it
27 was.

28 Q And where did you learn the technique of redirecting?

- 1 A Um --
- 2 Q Again, I'm focusing now in the fall of 2008, okay?
- 3 A Yes.
- 4 Q Okay. Where did you learn this technique of
- 5 redirecting?
- 6 A Um, mostly the -- my co-workers. And before I worked
- 7 there my great grandmother also had Alzheimer's and I kind
- 8 of learned a little bit through that.
- 9 Q When -- when Ms. Clement was asking -- talking to you
- 10 you mentioned that you -- you gave a list of things that you
- 11 would assist with and I want to understand when you would be
- 12 doing these things. For example, you mentioned you would
- 13 assist with showers in the memory care area.
- 14 A Yes.
- 15 Q Okay. Focusing on the fall of 2008, under what
- 16 circumstances would you be assisting with showers in the
- 17 Memory Care Unit, if at all?
- 18 A Well, um, if there was one, um, caregiver in that side
- 19 and they were doing dinner and we had a accident, um, to
- 20 where they needed to be cleaned up in the shower, um, I
- 21 would be asked to do it.
- 22 Q Okay. So -- because we are still talking 2:00 p.m. to
- 23 10:00 p.m., right?
- 24 A Yes.
- 25 Q Okay. And in terms of the shower schedules, what
- 26 would -- was the ordinary time of showering, in general, if
- 27 there was one? I don't know.
- 28 A It actually depended on the resident, especially in

1 memory care. There is no certain schedule, it's just
2 whenever you can get them willingly to go in the shower.

3 Q Okay. Um, but one example of when you might get
4 involved is if somebody had a accident, memory care folks
5 asked you to come over and assist?

6 A Yes.

7 Q Are there other circumstances in the fall of 2008
8 where you recall, um, assisting with showers and other -- in
9 other scenarios?

10 A Yeah. Sometimes there was more than one caregiver
11 needed with a resident, um, as in transferring or, um, one
12 person getting their attention while one washes.

13 Q Okay.

14 A Like keeping them focused on you while the other one
15 washes.

16 Q Got ya. Um, and did -- was that -- I don't want to
17 sound strange, but was that an enjoyable part of your --
18 your job?

19 A It was interesting let's say.

20 Q Why?

21 A Um, well, because you had the really nice residents
22 and then you had the very angry residents that would not,
23 you know -- they would get freaked out and then you got a
24 couple of punches in the face. So, I mean, just to try and
25 figure out what the best way to do it is and to get it to
26 where they are enjoying their shower was the challenge.

27 Q Um, then you mentioned in your list of things that you
28 would assist in memory care. And, again, I want to focus in

1 the fall of 2008, you said assisting residents go to the
2 restroom?

3 A Yes.

4 Q And can you tell the jury about the instances where
5 you might be involved in doing something like that?

6 A Helping out the caregivers. The caregivers might be
7 giving a shower or there might be, um, a caregiver that is
8 upset or anything else, I would be called and asked to take
9 them to the bathroom. Some residents we would have almost
10 on a schedule to take them to the bathroom so they would not
11 have accidents.

12 Q And you also mentioned, um, assisting residents in
13 dressing on the memory care side. Um, is that something you
14 did in the fall of 2008?

15 A Yes.

16 Q And tell the jury about what -- how you might become
17 involved in something like that?

18 A Um, same as helping out the caregivers. Um, with --
19 with all three, the bathroom care, the dressing, the
20 showers, um, if a resident comes too agitated with one
21 caregiver, bringing in another new caregiver may bring in a
22 whole new thing for them. They just may recognize you, be
23 more comfortable with you, and be able to follow your
24 direction easier.

25 Q Okay. And was that a strategy that you had received
26 some training on in terms of switching out caregivers and
27 having somebody else give it a shot?

28 A Um, no. I mean, Alicia Parga kind of told us this

1 because she had some training.

2 Q And you mentioned -- you mentioned, and I -- I
3 overlooked it, but I want to follow-up on it because you
4 mentioned if a caregiver was upset, um, that you might go
5 over to assist.

6 A I'm sorry, um, not a caregiver but a resident.

7 Q Oh, okay. All right. I see. So maybe I misheard
8 you.

9 But were there -- were there times that you would find
10 yourself being frustrated with, um, with a memory care
11 resident?

12 A Yes.

13 Q Okay. And did you receive any training about in terms
14 of what to do personally if you're starting to feel, um,
15 frustrated with a resident?

16 A Um, you call for help.

17 Q And why would you do that?

18 A Um, usually so the attention can get on the -- on the
19 other caregiver and so you can walk away and have the
20 resident be safe.

21 Q Walk away -- the walk away policy?

22 A Yes. We never wanted -- when the resident was
23 agitated, we never wanted to leave them alone so they
24 wouldn't hurt themselves, so that is why we would wait until
25 another caregiver got there.

26 Q Um, you mentioned -- so we are talking about fall of
27 2008 and you mentioned Alicia. Um, tell the jury, um, your
28 observations of Alicia.

1 MS. CLEMENT: Objection, vague.

2 MR. REID: I will ask it a different way, your Honor.
3 That is fine.

4 THE COURT: All right.

5 Q (By MR. REID) Um, can you tell the jury your
6 observations about Alicia in terms of her interactions with
7 the residents?

8 A She interacted very well with the memory care
9 residents. Um, they seemed to like her, even though they
10 really didn't get to see her that much because she was busy
11 doing the director position.

12 Q Where was her office?

13 A In the memory care, very small little office.

14 Q Okay. Closet maybe?

15 A Pretty much, yes.

16 Q Okay. Um, and so were there times then when, in the
17 fall of 2008, you got called over to assist in memory care
18 and you saw Alicia out in the unit working with the
19 residents; did that ever happen?

20 A I would have to say yes.

21 Q Okay. Does anything specific come to mind or is this
22 a general recollection?

23 A There would be sometimes when we would do like, um,
24 like a birthday celebration or like a holiday celebration,
25 let's say for, um, Christmas or something, and she would be
26 participating in that.

27 Q Okay. Do you happen to remember, um, a Halloween
28 event in -- on Halloween in 2008?

1 A Yes.

2 Q Do you happen to remember whether Mrs. Boice
3 participated in that event?

4 A Um, I don't remember. Um, it could have been that the
5 celebration was more during AM shift and the celebration
6 ended at -- at my start of my shift.

7 Q Have you seen any pictures of Mrs. Boice recently?

8 A Um, just the ones I have been shown, yes.

9 Q Okay. Um, did you ever see a picture of Mrs. Boice
10 wearing some kind of a costume?

11 A Hum. I cannot remember.

12 Q Okay. I want to talk a little bit about your
13 training, okay. You -- you told the jury, when Ms. Clement
14 was asking you, um, when you were first hired in, um,
15 September of 2007, um, you mentioned that part of your
16 initial training was watching some movies; do you recall
17 that?

18 A Yes.

19 Q And are you able today to tell the jury, um -- well,
20 how did that process work, these movies? What -- what --
21 help us understand how you're -- you were getting trained by
22 movies.

23 A Um, well, on the start of the day we would go into our
24 private dining room, which is connected to the large dining
25 room, and we would sit in there and watch the movies.

26 Q Okay. "We", who is "we"?

27 A Or any -- any person that is being hired, let's say.

28 Q When you were watching the movies do you remember

1 other people being in there with you?

2 A No.

3 Q Okay. Now, um -- and what -- can you recall the
4 topics of the movies that you were, um, watching when you
5 were hired?

6 A Welcome to Emeritus was one.

7 Q All right.

8 A No. I'm sorry, I can't --

9 Q That is okay.

10 A -- remember.

11 Q Um, about how long, if you can recall, did you spend
12 watching these -- was it more than one movie?

13 A Yes.

14 Q And, um, about how many movies was it?

15 A Five or six.

16 Q Do you have a recollection of about how long it took
17 you to watch these various movies?

18 A I would have to say between five to six hours I think.

19 Q Okay. And I'm going to test your memory. Tell me if
20 you -- if this sounds familiar or doesn't, okay?

21 A Okay.

22 Q Um, a -- do you remember seeing a movie about, um,
23 blood borne pathogens or infections?

24 A Yes.

25 Q And do you remember seeing a movie, um, about nose
26 over toes and how to safely transfer residents?

27 A Yes.

28 Q Do you remember seeing a movie about, um, Emeritus'

1 signature dining program?

2 A Yes.

3 Q Okay. What do you remember about that?

4 A That it was, um -- the dining was like a restaurant
5 style, that, you know, it was very professional and the
6 meals were awesome and residents really enjoyed the food and
7 that it was, um, very -- how would you say it -- um, I
8 guess, professional.

9 Q Um, how about, um, do you remember one of the movies
10 dealing with, um, how assisted living works as a new
11 approach to care?

12 A Yes.

13 Q And do you have a memory of one of the videos dealing
14 with, um, the aging process for -- for individuals, um, the
15 mind is willing but the body may be weak; does that sound
16 familiar?

17 A Yes.

18 Q And do you remember in -- in the videos that you saw
19 receiving some instruction about, um, dealing with
20 individuals who may have some memory loss or confusion?

21 A I'm not sure if I watched that video on my initial
22 start date.

23 Q Okay. Um, you have a memory of a video that dealt
24 with those issues?

25 A I do, yes.

26 Q And then also do you have a memory on your start date
27 of watching a video that, um, described your obligations as
28 a mandated reporter?

1 A Yes.

2 Q And what -- what do you recall about that video
3 communicating to you?

4 To tell your supervisors and if your supervisor
5 didn't -- you didn't feel that they did it correctly, then
6 go to like your ED. And then if they didn't do it -- they
7 also mentioned Ethics First and some phone numbers that you
8 could call.

9 Q Any other movies that you remember watching on that --
10 that, um, that first day of your employment?

11 A No.

12 Q And you were -- you were hired -- and this was your
13 training to be a resident assistant; is that correct?

14 A Yes.

15 Q And then after the movies, what happened after that,
16 as far as your initial training was concerned?

17 A The next day I came in and I shadowed a more
18 experienced, um, resident assistant.

19 Q What does that mean, you shadowed them?

20 A You follow them around and they show you how to do
21 stuff.

22 Q Okay. And can you describe for the jury that process,
23 what -- how did that work?

24 A Well, the -- the caregiver I followed took me to a
25 room and they are like, this is how we do showers for this
26 resident, um, like certain things, like what slippers they
27 like to wear or, you know, how to -- how she would lift the
28 resident into a wheelchair or, you know, what residents to

1 remind to come down for dining room, residents you needed to
2 bring down. Um, pretty much just like standard care stuff.

3 Q Okay. And do you remember who it was that you
4 shadowed?

5 A Yes.

6 Q Who was that?

7 A Linda Pacharto (phonetic).

8 Q Did you ever wind up shadowing someone else in the
9 other two and a half years that you worked there?

10 A Yes.

11 Q Um, now we saw, when Ms. Clement was questioning you,
12 that in December of 2007 you did the 16 hours of med tech
13 training, correct?

14 A Yes.

15 Q And, um, do you -- do you have an understanding or did
16 you have an understanding as to when the regulations came
17 into play that required med techs to have that type of
18 training?

19 A We were told that we needed the training course before
20 we were a med tech, yes.

21 Q Okay. And did you have -- did you have any
22 understanding as to, um, when those requirements came into
23 be, when they became effective that you had to have the
24 training before you could be a med tech?

25 A When -- when we -- when I went through the training
26 course.

27 Q Okay. So you -- you did the training course in -- in
28 December of 2007?

1 A Yes.

2 Q I want to, um -- if we can, I would like to look at --
3 if you could get Exhibit 32 off of the shelf, please, behind
4 you? Okay.

5 Would you turn to page 66, please?

6 Your Honor, I believe this has been admitted into
7 evidence, and I would ask for permission to display pages 66
8 and then 67.

9 THE COURT: This is Exhibit 32, correct?

10 MR. REID: Yes, your Honor.

11 THE COURT: I only have -- that's right, the whole
12 thing was admitted.

13 MR. REID: Yes.

14 THE COURT: Go ahead.

15 MR. REID: Thank you. Page 66.

16 While they are pulling that up -- can you highlight
17 the top portion there for us, Ms. Ford?

18 Q (By MR. REID) Can you tell the -- the jury what, um,
19 this document is?

20 A It's a training service for elder abuse and mandated
21 reporting.

22 Q Okay. And, um, the date of that was what?

23 A 5/23/08.

24 Q All right. So you had -- you had seen the elder abuse
25 video in -- when you were hired, right?

26 A Yes.

27 Q And then -- and then in May of 2008 -- if you go to
28 the sign-in portion.

1 Um, were you -- you participated in this in-service
2 training?

3 A Yes.

4 Q All right. Now, on the second page, page 67, um, in
5 May of 2008 you were informed of what abuse of an elder or
6 dependent adult means, correct?

7 A Yes.

8 Q All right. And there was a whole list of things.
9 Physical abuse and neglect was one of the things that you
10 were told includes elder abuse, right?

11 A Yes.

12 Q And, um, what did you understand neglect to mean?

13 A Um, lack of care.

14 Q Can you pull out, please?

15 Now, in the next paragraph, um, of this training
16 session, um, did you understand that California State law
17 required a mandated reporter, um, who has observed or has
18 knowledge of an incident that reasonably appears to be, um,
19 abuse or neglect or is told by an elder dependant adult that
20 he or she has experienced this behavior you need to report
21 that?

22 A Yes.

23 Q All right. And who were you told that you were
24 obligated to report that to?

25 A Supervisors.

26 Q Can you pull up the next two bullet points, please?

27 All right. What -- what, um -- what does -- weren't
28 you told in May 2008 that State law required that if you

1 suspected neglect you were required to telephone
2 immediately, or as soon as practically possible, to call the
3 local ombudsman or the local law enforcement agency?

4 MS. CLEMENT: Objection, leading, lacks foundation
5 this witness was shown the document at the time of the
6 in-service, your Honor.

7 THE COURT: It is leading, and there is a lack of
8 foundation as to the witness seeing this document.

9 MR. REID: Okay.

10 Q (By MR. REID) Um, when you look at this document,
11 Ms. Hitt, does that refresh your memory of you having an
12 understanding in May of 2008 who you were supposed to report
13 suspected neglect or abuse to?

14 A Yes.

15 Q And then, um, does this document refresh your memory
16 as to the form you were supposed to send out and send in to
17 state agencies if you suspected neglect or abuse?

18 MS. CLEMENT: I will object, your Honor, it lacks
19 foundation. There still hasn't been a foundation laid for
20 this.

21 THE COURT: Sustained. We had talked about, Mr. Reid,
22 stopping at this point anyway.

23 Ladies and gentlemen, leave your notebooks on the
24 chairs. Remember the admonitions. You are going to have a
25 little longer lunch. I will see you back at 1:30. I will
26 see you then.

27 Ms. Hitt, I need you back at 1:30.

28 THE WITNESS: Okay. Do you want me to close this?

1 THE COURT: Just leave it open. That is fine. Thank
2 you.

3 THE WITNESS: Thank you.

4 **(The following proceedings were held in open court, outside**
5 **the presence of the jury:)**

6 THE COURT: All right. Please be seated.

7 When we last took up the topic of contact with, um,
8 former or current employees at Emeritus at various levels,
9 um, Mr. Reid, I had asked you to communicate with
10 Ms. Clement to identify those persons whom you thought you
11 continue to represent.

12 Did you do so?

13 MR. REID: Yes, your Honor. We -- we sent
14 Ms. Clement's office a letter. It was -- you had ordered it
15 by noon, I think we got it out about 10 minutes after 12:00
16 on, um, Friday.

17 THE COURT: You are forgiven.

18 MR. REID: Thank you. Um, with a list of each of the
19 individuals that we represent, along with their, um,
20 position at Emerald Hills, whether they are current or
21 former employees, whether they are a officer, director or
22 managing agent of Emeritus, whether they were represented by
23 counsel during their deposition, whether they have consented
24 to representation, and whether there is a written agreement,
25 um --

26 THE COURT: May I have that letter, please?

27 Could you hand -- Ms. Clement, you have it, correct?

28 MS. CLEMENT: Yes, I do.

1 THE COURT: All right. I would like to get this
2 marked, please, as a Court exhibit.

3 MR. REID: Yes, your Honor. I have one note on here,
4 I can cross it out. I think we e-mailed it to the Court at
5 the same time as we e-mailed it to everyone else.

6 THE COURT: If you did, I didn't get a copy of it.
7 And, Madam Clerk, if you could mark this, please.

8 THE CLERK: Yes, your Honor.

9 THE COURT: Did you note on the letter whether or not
10 the depositions -- to the extent you represented any of
11 these people at depositions, whether or not you stated on
12 the record you represented them for deposition purposes
13 only?

14 MR. REID: I don't believe that's in the letter, your
15 Honor, but to my knowledge there is no depo in this case
16 that has that statement in it, understanding that I have
17 been on the case for six or seven months and Ms. Wells has
18 been on it longer. There were times that depositions were
19 taken that none of the firms before you or the lawyers
20 before you were involved. But to my knowledge, there isn't
21 a statement to that effect in any of the depositions.

22 THE COURT: All right. While that is being marked and
23 before I take a look at it, Ms. Clement, when you received
24 this document how, if at all, did you respond to it?

25 MS. CLEMENT: I responded immediately by letting them
26 know that their letter failed to address specifically when
27 their firm was retained by the witness, after their
28 deposition and/or after their termination. I also stated it

1 would, of course, be determinative as to know if, in the
2 case of terminated employee, their firm obtained a written
3 waiver of the conflict of interest as they would want, of
4 course, to be completely transparent in their
5 representations to both me and to the Court.

6 I did not get a reply to that. That was sent Friday
7 at 2:00 p.m.

8 THE COURT: May I have that document, please?

9 THE CLERK: Yes, your Honor. It's Court Exhibit 1.

10 THE COURT: I think it's not number 1. I think there
11 are more than that, but for right now, I can't remember what
12 the other exhibits were.

13 MS. CLEMENT: I think we are at least on 2.

14 THE COURT: Yeah, so do I.

15 THE CLERK: Court Exhibit 2?

16 THE COURT: Let's do that for now and if we need to,
17 we will change it.

18 THE CLERK: It's marked, your Honor.

19 **(Court Exhibit 2 was marked for identification.)**

20 THE COURT: Okay. Before we get any further in this,
21 in reviewing the applicable case law one of the most
22 important things for a Court to consider is, um, were the
23 witnesses, in fact, represented by counsel at the time of
24 the alleged improper contact. And the only way for the
25 Court to know that, of course, is to see either written
26 documentation to that effect or some type of declaration.

27 The fact that somebody may or may not be represented
28 is not sufficient for the Court to do, um, any analysis, and

1 if there is no written representation agreement, which may
2 be problematic in and of itself, then I need to see some
3 form of documentation either by way of declaration from the
4 attorney or attorneys who contacted the person, when they
5 contacted them, what they said and what the purposes were
6 for.

7 The reason for that is, um, the burden that
8 Ms. Clement may have is to determine, um -- well, for the
9 Court to determine what did she know and when did she know
10 it and how did she know it. And absent some kind of --
11 other than the officers, directors and managing agents,
12 which I assume are not really in play on this; is that
13 correct?

14 MS. CLEMENT: That is absolutely --

15 MR. REID: That is correct.

16 MS. CLEMENT: That is correct, your Honor.

17 THE COURT: So we are talking about what I would refer
18 to as line employees, either former or current line
19 employees.

20 Now, Mr. Reid, focusing me on specifically current
21 employees of Emeritus, not managing officers, directors or
22 agents, who on this list is such a person?

23 MR. REID: I'm going to need to pull the letter up. I
24 believe that it's addressed in the letter of who are current
25 employees -- I apologize, your Honor.

26 MS. CLEMENT: I can answer that for your Honor. The
27 numbers 1 through 24 are current employees.

28 THE COURT: Wait. Hold on a second, Ms. Clement. I

1 asked a very specific question.

2 Who is not an officer, director or managing agent --

3 MS. CLEMENT: Oh. Oh, I'm sorry. I apologize.

4 THE COURT: -- who isn't a current employee?

5 MS. CLEMENT: Who is not? Yes.

6 That would be number 1, Ermalinda Alonzo. Number 4,
7 Alfredo -- I'm going to mispronounce this -- Arriaga,
8 A-r-r-i-a-g-a. Um, number -- questionable, number 9, Mary
9 Ann Peterson, executive director. 10, Chris Garibaldi,
10 maintenance director. 11, Angelica Juarez, med tech.
11 Number 12, Nanette Read, med tech. Questionable, number 13,
12 Leisha, L-e-i-s-h-a, Flores, resident care director or
13 nurse.

14 And that would be it for current employees, your
15 Honor.

16 THE COURT: Well, what about past employees who are
17 not officers, managing agents, or directors?

18 MS. CLEMENT: Okay. So the past employees, your
19 Honor, start at number -- to my knowledge, number 25, Lynda
20 Kittle, who was formerly a resident assistant and med tech
21 who was terminated/fired by the Defendant in October 2012.
22 Alicia Parga, who was the memory care director who, um, quit
23 in, I believe, 2009. Michelle Riley, resident assistant med
24 tech who was fired in, I believe, 2010. Margaret Peggy
25 Stevenson who was the resident care director and quit in
26 early 2009. Ronda Castleberg Smith, who was a named and the
27 only named -- individually named defendant in this case but
28 was dismissed from the lawsuit in, I think it was, the first

1 week of trial. Catherine Ratelle, who was a vice president
2 of operations who was fired in --

3 THE COURT: Okay. But now we are getting up again at
4 the officer, director, or managing agent level.

5 MS. CLEMENT: Those are all terminated people.

6 THE COURT: Okay. All right. For each person -- I'm
7 not going to do this on a broad brush scale. For each
8 person that Mr. Reid believes may have been inappropriately
9 contacted, I need you to make an appropriate offer of proof
10 very specific, as I have indicated and in which the case law
11 requires, and then I also need you to advise me as to how
12 you knew -- how you believe Ms. Clement knew that that
13 person was, in fact, represented.

14 MR. REID: Yes, your Honor.

15 THE COURT: Not had reason to know, but knew it.

16 MR. REID: Very good.

17 THE COURT: Okay.

18 MR. REID: Just -- just so the Court is aware, um, I
19 have had, um, folks in my firm researching the issue over
20 the weekend and, um, putting together points and
21 authorities, also, um, collecting declarations and -- and
22 exhibits, and, um, I'm expecting that we probably would like
23 to look through it before we submit it, but we do have
24 some --

25 THE COURT: I don't want a whole pile on information
26 on witnesses for which there is no issue.

27 MR. REID: Right. This is -- I think it's specific
28 to -- to three or four specific witnesses, in particular,

1 the -- the line level -- couple of the line level currents
2 and a couple of the line level, um, employees that don't
3 work with us anymore.

4 THE COURT: And these are all individuals who you
5 believe Ms. Clement may have contacted inappropriately?

6 MR. REID: Yes, your Honor.

7 THE COURT: Okay.

8 MR. REID: Or attempted to.

9 THE COURT: Well, I don't know what that means by
10 "attempt to", so I'm just going to hold off on that for
11 right now.

12 But the first person who, um, we need to talk about,
13 it seems to me, is the name of the person who --

14 MS. CLEMENT: Lynda Kittle, your Honor.

15 THE COURT: Lynda Kittle. Okay. So let's -- let's
16 talk about Lynda Kittle right now.

17 MS. CLEMENT: Yes, your Honor. I'm prepared to
18 address that.

19 THE COURT: Where is she in this document?

20 MS. CLEMENT: Number 25, page 7.

21 THE COURT: Okay. First, let me ask Mr. Reid, do you
22 have her deposition?

23 MR. REID: I do not have it with me in front of me,
24 your Honor. I can pull it up. I can pull it up.

25 THE COURT: I want to know what, if anything, was said
26 about the representation at her deposition?

27 MS. CLEMENT: Your Honor, I can answer that question
28 for you.

1 THE COURT: Okay.

2 MS. CLEMENT: Um, Ms. Kittle, um, was represented --
3 was, um -- the deposition was taken on April 6th, 2011.
4 Defense Counsel, Kim Wells, who is here today, was with the
5 law firm of Prout LeVangie at the time. She appeared at the
6 deposition and stated she was counsel for the defendants.
7 At the time the defendants were Emeritus Corporation and
8 Ronda Castleberg. As you know, Ms. Castleberg has been
9 dismissed. That's at page 5, lines 4 through 5 of the
10 deposition of Ms. Kittle.

11 At no time during the deposition did Ms. Wells state
12 she was representing Ms. Kittle in her personal capacity
13 which, of course, there would have been no need for such
14 representation as no part of Plaintiffs' case has been ever,
15 up through today, to blame facility level employees for Joan
16 Boice's neglect or death.

17 THE COURT: Okay. But the deposition was in 2011, she
18 said she represented the defendant, and Ms. Kittle was still
19 employed at the time?

20 MS. CLEMENT: She was still employed at the time. She
21 was not -- under 2100, your Honor, she would have to be a
22 core employee, which clearly she is not. Um, in -- would
23 you like me to proceed, your Honor, or stop here?

24 THE COURT: In reviewing the deposition transcript,
25 um, were there -- were there any statements made from your
26 review by Ms. Wells which indicated that she was there
27 representing, even though she said she represented the
28 defendant, that she was there representing Ms. Kittle?

1 MS. CLEMENT: At no time, your Honor.

2 THE COURT: At any time in the deposition did she
3 instruct Ms. Kittle not to answer any questions?

4 MS. CLEMENT: Um, that I do not recall, but I can
5 quickly tell you that.

6 THE COURT: I have Ms. Wells here.

7 MS. WELLS: Yeah. I did review the deposition
8 transcript yesterday too.

9 THE COURT: Okay.

10 MS. WELLS: I did make objections. I did counsel her.
11 I don't believe, other than some, um, personal, um, private
12 information on third party names, um, we did -- we did agree
13 to have a stipulation to allow those -- the deposition to be
14 sealed for those purposes, but I didn't specifically
15 instruct her not to answer a question.

16 MS. CLEMENT: Just to clarify, your Honor, that was
17 regarding patient names.

18 THE COURT: Okay.

19 MS. WELLS: Correct.

20 THE COURT: You know what, unless I ask for somebody
21 to respond, please don't, because this is not a match, you
22 know, one for one here, I'm trying to get some information.

23 Ms. Wells, did you meet with Ms. Kittle before her
24 deposition?

25 MS. WELLS: Yes, I did.

26 THE COURT: And, um, did you obtain any kind of
27 documentation from her that you were going to be
28 representing her or did you advise her that you were

1 representing her?

2 MS. WELLS: I advised her that we were working on an
3 attorney-client agreement, that the things she and I
4 discussed --

5 THE COURT: That is not my question.

6 MS. WELLS: -- were confidential.

7 THE COURT: Did you advise her that or did you offer
8 to represent her at the deposition?

9 MS. WELLS: That I can't recall specifically.

10 THE COURT: Did she ask you to represent her at the
11 deposition?

12 MS. WELLS: That I can't recall specifically.

13 THE COURT: Did you ever tell Ms. Clement, or whoever
14 took the deposition, that you were representing Ms. Kittle?

15 MS. WELLS: At the time I believe, your Honor, when we
16 were setting up the deposition schedules that we would --
17 that there was a statement made that we would be
18 representing the --

19 THE COURT: What kind of statement?

20 MS. WELLS: -- individuals.

21 That when the deposition --

22 THE COURT: Written or oral?

23 MS. WELLS: Oral. I'm sorry.

24 THE COURT: I don't know the substance of Ms. Kittle's
25 testimony, but by way of offer of proof generally what is
26 the substance of her testimony?

27 MS. CLEMENT: She was one of Mrs. Boice's, um, med
28 techs, and she was the person who did the incident report.

1 She was there and found Mrs. Boice when she fell on
2 September 12th. So she had information. She was on a story
3 board. She complained to her supervisors that, um, she
4 didn't think it was safe to have only one person and she
5 complained about understaffing. I think I didn't finish my
6 sentence. She complained it wasn't safe to have only one
7 person in the Memory Care Unit.

8 THE COURT: All right. When is Ms. Kittle supposed to
9 come in and testify?

10 MS. CLEMENT: Well, we wanted to call her this week,
11 your Honor, but we have been precluded from contacting her
12 since Thursday, your Honor.

13 THE COURT: Okay. I would like her here about 8:45
14 one morning, perhaps Thursday morning, um, and I, um, would
15 like to ask her a few questions myself as part of a 402
16 hearing.

17 Is that possible? Can you get her? She is no longer
18 working for you guys, right?

19 MS. WELLS: That's correct, but we can get her.

20 THE COURT: Do you know if you can or can't?

21 MS. CLEMENT: Um, I'm certain that we can, your Honor.
22 You know, I know that she doesn't have transportation and
23 that we would have to get someone to go pick her up, which
24 is what we did when she came to my office in -- on December
25 13th, 2012.

26 MR. REID: Your Honor, Ms. Kittle has, to my
27 understanding, has re-confirmed her desire for our
28 representation, um, and we will arrange to have her here

1 whenever the Court --

2 THE COURT: How has she re-confirmed this?

3 MR. REID: By -- when this came up Thursday morning
4 you asked us to contact her to find out if she wanted -- was
5 wanting us to represent her and we did that.

6 THE COURT: You did that orally?

7 MR. REID: Correct.

8 MS. WELLS: Correct.

9 THE COURT: Did you get anything from her in writing?

10 MR. REID: We have not gotten a representation letter
11 because you asked us not to get anything else. We do have a
12 declaration from her.

13 THE COURT: Here's the problem -- and I -- and I
14 would, um, ask, based on each of your own professional
15 ethics, to not have any further communication with her about
16 this subject. Um, I need to know what she thought, what she
17 understood when the alleged communications, or whatever it
18 was, happened between Ms. Clement and herself, period.

19 Going forward, from when she comes in and she
20 testifies, if she says she now wants to be represented by
21 someone else, so be it. But the question is, what was the
22 state of the facts, what were the nature of what was going
23 on at the time that Ms. Clement contacted this witness,
24 whether or not it was clear or not clear and what was the
25 history.

26 It is always problematic when attorneys do not get
27 representations in writing for people and then it becomes a
28 bunch of oral colloquy one way or the other. Now, the fact

1 that she was an employee at the time of the alleged
2 incidents may or may not be relevant for purposes of were
3 the acts she engaged in likely to have bound the corporation
4 for something. I mean, there is a whole series of questions
5 that need to be asked, all of which could have been avoided
6 if representations were in writing and formalized, which is
7 part of the problem and part of the reasons why these cases
8 have to look at a whole series of issues going forward. But
9 I will talk to her and ask her a series of questions and
10 find out.

11 Now, what seems to be the situation, and I want to see
12 any declarations or any information that you may be
13 providing, is that this is as clear as mud as to who was
14 representing her or not representing her. And I will just
15 tell you now that if it is not abundantly clear there was a
16 series of things that should have been, if it was going to
17 be done right, done and that would have been clarification
18 in writing.

19 Ms. Clement, you had mentioned to me earlier that you
20 had attempted to communicate with Defendants about figuring
21 out who was represented by them or not. Did I get that
22 wrong?

23 MS. CLEMENT: No. You got that right, your Honor.

24 THE COURT: When did that happen?

25 MS. CLEMENT: On Friday, the 18th, but that wasn't the
26 first time I have raised it. I have raised the conflict of
27 interest with them during the course of this case many
28 times.

1 THE COURT: Do you have it in writing, or e-mails, do
2 you have anything like that?

3 MS. CLEMENT: Yes. It's on the record in depositions
4 as well, your Honor.

5 THE COURT: Okay. Well, they are going to give me a
6 whole series of paperwork, you need to provide me with
7 whatever communications that you have had.

8 But let me just start out with this basic premise here
9 to see if the parties can meet and confer on this. If it
10 was not abundantly clear who was representing who, if there
11 were efforts to try and clarify it and if those efforts were
12 not met in return so that there was greater clarification
13 about this, and if, as a result of that, I can ultimately
14 determine that Ms. Clement, not that she should have known
15 but had no reason to know at some point that this person was
16 in fact represented at the time she contacted them, then
17 there is no violation. However, if you can show me a track
18 of clarity with regards to representation, that's one thing.

19 Now, do I think that this is a good way to run a ship?
20 No. Either -- from either side on this. But, um, we will
21 start with Ms. Kittle. Is there -- after Ms. Kittle, is
22 there anyone else this week who falls into this we don't
23 know if -- that you think somehow Ms. Clement
24 inappropriately contacted?

25 MR. REID: She is the only witness that hasn't
26 testified that I have information -- this information about.

27 MS. CLEMENT: Your --

28 THE COURT: Go ahead, Ms. Clement.

1 MS. CLEMENT: Thank you, your Honor. There is no way
2 we are going to get to Ms. Kittle this week, I will tell you
3 that, at the pace we are going.

4 THE COURT: Do you want to bring her in next week?

5 MS. CLEMENT: Yeah.

6 THE COURT: I want to talk to her before her
7 testimony.

8 MS. CLEMENT: Right. We only have three days of
9 testimony. We have such a short week this week, and we have
10 a lot of people that we have been promising and they have
11 been waiting, hanging out there to go on the stand.
12 MS. Kittle does not work, so I don't think it's as critical
13 to get her on the stand as others.

14 What is concerning to me, your Honor, is the fact that
15 she was a former employee, under both Triple A Machine Shop
16 and the Bobele, B-o-b-e-l-e, versus Superior Court case,
17 1988, 199 Cal.App.3rd, 708, 712, under those cases
18 plaintiffs' counsel could contact former employees of the
19 defendant, including managerial employees. Um, former
20 employees are not parties under CRPC, California Rules of
21 Professional Conduct, 2100, and Ms. Kittle was never a party
22 to the lawsuit. There was never any allegations made
23 against her.

24 And the real question, as I understand it, your Honor,
25 is what is the nature of the representation claimed by the
26 defendants. The only time the Defense Counsel claimed to
27 represent Lynda Kittle in writing was after I interviewed
28 her. I --

1 THE COURT: There is another step here too though. I
2 mean, I appreciate what you're saying, but the step also has
3 to do with considering what the witness may or may not have
4 done which had the ability to hold the corporate entities
5 responsible for their acts, and in an elder abuse and
6 neglect case we are, in fact, talking about situations where
7 the negligence of an employee, for example, could arguably
8 be the basis for a subsequent claim against the corporation.
9 So it's more complicated than just a simple statement out of
10 one case or another.

11 MS. CLEMENT: I -- I --

12 THE COURT: The most important thing -- I will take
13 all of your responses in writing and look at them. I'm
14 hoping -- well, it doesn't seem to me, even listening to
15 what we have going here now, that we have clarity. I can't
16 turn to a piece of paper and say, here's our agreement, we
17 represented this person, here's a statement on the record at
18 a deposition, we represent this person for all purposes.

19 MS. CLEMENT: But, your Honor --

20 MR. REID: My --

21 MS. CLEMENT: -- the issue is what's the nature of the
22 representation and who holds the privilege.

23 When I learned in October of 2012 that Ms. Kittle had
24 been fired, I served her a subpoena for the then-pending
25 trial date of October 22nd. As you know, we then -- the
26 trial start date was moved to January 2nd. We sent
27 Ms. Kittle a letter informing her of the new trial date.

28 In November my office staff asked Ms. Kittle if she

1 could -- would be willing to speak with me before testifying
2 at trial. This is my responsibility to prepare witnesses
3 before they take the stand and also pursuant to the Court's
4 order to advise them of the Court's rulings on the motions
5 in limine. I -- she contacted -- she replied and said, yes,
6 she would be happy to meet at my office. At no time did she
7 ever say she was represented by counsel and that question
8 was specifically put to her.

9 We must --

10 THE COURT: You asked her whether or not she was
11 represented by counsel?

12 MS. CLEMENT: Yes. Absolutely, your Honor.

13 THE COURT: That is part of the issue that I'm trying
14 to get to here is what did the witness believe at the time
15 of your contact, not what her status is today.

16 MS. CLEMENT: And -- and, your Honor, let's not forget
17 that the person who holds the privilege of attorney-client
18 is the client.

19 THE COURT: Well, it's -- I am going to sound like a
20 broken record here, it's more complicated than that,
21 particularly where a person may have been subject to
22 representation by another attorney and been counseled by
23 another attorney. But we are not going to get to the bottom
24 of this right now. It doesn't appear to me to be something
25 that is easily addressed one way or the other.

26 Now, if there is any -- if there are additional
27 persons that you believe you have the ability and the right
28 to contact, we need to talk about that at some point and get

1 that resolved as well. For every person that you tell me
2 now you do, in fact, represent, then you will be producing,
3 I assume, that person under the subpoenas that Ms. Clement
4 has issued, you will be advising them of whatever, but that
5 doesn't necessarily mean that that attorney-client
6 relationship will cover an umbrella over any past
7 communications or any past activities that may be involved
8 because there seems to me to be such a spotty degree of who
9 is representing who for what period of time. So we are just
10 going to have to go item by item on this.

11 MS. CLEMENT: And, your Honor, as I mentioned on
12 Thursday, in these situations of these former employees who
13 were terminated, there is, of course, an obvious conflict of
14 interest. And under the Rule 3 dash 210, the Defendant
15 needs to have a written disclosure and a signed written
16 waiver of the conflict, which is what I have repeatedly
17 raised with the Defense, and that doesn't exist.

18 I will tell you, your Honor, the first -- I -- I got a
19 letter on January 4th from Ms. Badawiya in which she
20 represent -- stated she represented Ms. Kittle and Ms. Doris
21 Marshall at that time. And, you know, when I got that I
22 knew it was false at that time. And I wrote back to Defense
23 Counsel, Mr. Reid, specifically, and I asked him to confirm
24 this because I knew it was false. I had already met with
25 Doris Marshall and her attorney, Diane Marshall Freeman. I
26 had already met with Ms. Lynda Kittle and knew she wasn't
27 represented by them and, in fact, hadn't heard from them
28 since she had been terminated. So, you know, I knew it was

1 false. I asked for it in writing. The response then in the
2 court -- the next court day I asked about it and was told,
3 We have written letters of representation. And I said,
4 Let's see them then. And now they are not being produced.

5 And -- and -- you know, it's -- it's a very serious
6 accusation, your Honor, and it's not true. The rules are
7 very specific about who can be contacted and my
8 responsibility. It would be absolute malpractice for me to
9 call witnesses to the stand who -- who haven't been prepped,
10 who haven't been met with, who I don't know if they are even
11 relevant or there is a foundation for them to be called as a
12 witness in the case. And when they have been terminated and
13 when they say they aren't represented by counsel and they
14 aren't a party or a core employee, I'm doing my job.

15 And to accuse me, when these people are former fired
16 employees, when they have no conflict waiver -- and I'm
17 confident that does not exist, your Honor, because I have
18 brought that up repeatedly throughout this case. They don't
19 exist. And if they are going to go manufacture something
20 now, as I believe the Court stated on Thursday, it needed to
21 be something that pre-existed these communications.

22 THE COURT: Well, we will get to the bottom of this.
23 We are going to continue to move forward during the trial.
24 And, if necessary, each witness perhaps outside the presence
25 of the jury will get asked certain questions --

26 MR. REID: I can respond, but it doesn't sound like
27 that there is a need at this point to do that.

28 THE COURT: I want to -- if there is three or four

1 people that you say you want the Court to consider, get that
2 paperwork on file. And remember that I am interested in the
3 time when Ms. Clement talked to them, not what's happening
4 right now. And if you are going to just make a statement in
5 there, we have an oral agreement to that, I need a
6 declaration under penalty of perjury from that witness as to
7 the date and time they agreed to it and with whom they
8 agreed to it. I'm not going to rely just on Counsel's
9 representation, it's going to be the witness's
10 representation to the Court.

11 MS. CLEMENT: And --

12 THE COURT: We need to take our lunch break.

13 MS. CLEMENT: Um --

14 THE COURT: We are taking our lunch break. I will see
15 you back at 1:30.

16 (Lunch recess.)

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1 TUESDAY, JANUARY 22, 2013

2 AFTERNOON SESSION

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4 The matter of JOAN BOICE, by and through her
5 Successor-in-Interest, ERIC BOICE, and ERIC BOICE, NANCEE
6 BOICE, and MARK BOICE, individually, Plaintiffs, versus
7 EMERITUS CORPORATION dba EMERITUS AT EMERALD HILLS,
8 Defendant, Case Number 34-2009-00063714, came on regularly
9 this day before Honorable JUDY HOLZER HERSHER, Judge of the
10 Superior Court of California, for the County of Sacramento,
11 Department 45.

12 The Plaintiffs, JOAN BOICE, by and through her
13 Successor-in-Interest, ERIC BOICE, and ERIC BOICE, NANCEE
14 BOICE and MARK BOICE, were represented by LESLEY A.
15 CLEMENT, Attorney at Law; VALERIE DAWSON, Attorney at Law
16 (not present); ASHLEY BAIRD, Attorney at Law; and SEAN
17 LAIRD, Attorney at Law.

18 The Plaintiff, ERIC BOICE, was present.

19 The Plaintiffs, MARK BOICE and NANCEE BOICE, were
20 not present.

21 The Defendant, EMERITUS CORPORATION dba EMERITUS AT
22 EMERALD HILLS, was represented by BRYAN R. REID, Attorney
23 at Law; RIMA BADAWIYA, Attorney at Law; and KIM M. WELLS,
24 Attorney at Law.

25 Also present on behalf of the Defendant, EMERITUS
26 CORPORATION dba EMERITUS AT EMERALD HILLS, was JANET E.
27 McKINNON, Vice President of Legal Affairs; LISA HULSE, Vice
28 President Quality & Risk Management; and HOLLY A. FORD,

1 Trial Consultant.

2 (The following proceedings were then had in open
3 court, in the presence of the jury.)

4 THE COURT ATTENDANT: At this time, come to order.
5 Department 45 is once again in session. The Honorable
6 Judge Judy Hersher presiding.

7 You may be seated.

8 THE COURT: There was a question pending.

9 Do you want to rephrase it, or how do you want to
10 proceed?

11 MR. REID: Your Honor, I'll withdraw the question
12 and move on.

13 THE COURT: Okay.

14 MR. REID: Thank you.

15 Good afternoon, ladies and gentlemen.

16 JURORS IN UNISON: Good afternoon.

17 TESTIMONY OF

18 JENNY LYNN HITT, a witness called pursuant to 776 of the
19 Evidence Code by the Plaintiffs:

20 REDIRECT EXAMINATION (resumed)

21 BY BRYAN R. REID, Attorney at Law, Counsel on behalf of the
22 Defendant:

23 Q. Miss Hitt, sorry. Is that how you say it, Hitt?

24 A. Yes.

25 Q. Okay. Before lunch, I was asking you questions
26 about trying to focus the time frame of the fall of 2008.

27 And just for a moment, I want to fast-forward and ask you a
28 few questions about when your employment was terminated in

1 April or May of 2010. Okay?

2 A. Okay.

3 MR. REID: Your Honor, with permission, can I put up
4 Exhibit 284? I'm going to need to use the Elmo.

5 THE COURT: Okay.

6 Q. (By MR. REID) I wanted to ask you about how your
7 job was going in April, May of 2010. First of all, can you
8 describe for the jury how your relationship was with the
9 executive director that was in place at that point in time.

10 A. Um, she was pretty new, so we really haven't --
11 hadn't got a chance to know each other very well. But at
12 that time I was raising a lot of concerns, and she was
13 aware of that. So we had a lot of heated discussions.

14 Q. Okay. Now, I highlighted a line here I just wanted
15 to ask you to follow up on. When you sent the e-mail --
16 and let me back up a step.

17 This is an e-mail that you sent through the
18 ethics -- Ethics First Hotline; is that right?

19 A. Yes.

20 Q. Okay. And how did you become aware of the Ethics
21 First Hotline?

22 A. Well, it's been previously discussed in like
23 employees meetings. We also had like a poster up in our
24 clock-in room that was about the Ethics First.

25 Q. Okay. And what was your understanding of what the
26 Ethics First Hotline was for?

27 A. For employees or even family members to contact if
28 they feel that their concerns aren't being met by the

1 supervisors in the building.

2 Q. Okay. Now, you said family members could use the
3 Ethics First Hotline, too?

4 A. Yes.

5 Q. Do you have an understanding of how the family
6 members would know about the Ethics First Hotline?

7 A. Through the -- through the poster.

8 Q. What -- okay. The one in the clock-in room, or was
9 there a poster somewhere else?

10 A. I believe there was one in the marketing office
11 also.

12 Q. Okay. Would that -- the marketing office, is that
13 where people would come to interview and find out about
14 Emerald Hills?

15 A. Yes.

16 Q. Okay. Now, I highlighted a line here, and it
17 indicates in the e-mail that you sent that you had recently
18 applied for the wellness coordinator job.

19 A. Yes.

20 Q. Okay. Had you -- is that correct? Had you recently
21 applied for that job?

22 A. Yes.

23 Q. And what was your position then at the time that
24 you -- that you applied for that position?

25 A. My position was p.m. lead med tech.

26 Q. Okay. What would be the difference between p.m.
27 lead med tech and wellness coordinator?

28 A. The wellness coordinator was pretty much a nurse's

1 assistant.

2 Q. Okay. And apparently you had indicated that you
3 didn't get the job.

4 A. Correct.

5 Q. Who was it that you interviewed with about getting
6 the wellness coordinator job?

7 A. I believe it was Rich.

8 Q. Okay. And he was -- was he the executive director
9 before -- before Miss Goens (phonetic)?

10 A. Goins.

11 Q. Goins?

12 A. Yes.

13 Q. Okay. Now, Miss Clement asked you some questions
14 about your -- your last e-mail back to Emeritus. And I
15 just wanted to follow up on that.

16 What were -- what was the purpose of the e-mail that
17 you sent on May 25th, 2010?

18 A. To let them know that I had been -- I had been
19 terminated. And I was wanting my question answered. If I
20 was fired on a med error, then why wasn't there other
21 med techs fired because the same reason?

22 Q. Okay. And -- now, the document seems to indicate
23 that there had been a series of errors. Is that not
24 your -- is that your recollection, or is that not accurate?

25 A. A series of errors for me, or just in general?

26 Q. For you.

27 A. I had made some which weren't as serious as the one
28 that they were accusing me of.

1 Q. Okay. I also -- there was an indication, and I want
2 to find out if this is accurate with your memory, that you
3 had been counseled about -- previously before you were
4 terminated?

5 A. Previously, no.

6 Q. Okay. So there had been -- I just want to make sure
7 I'm clear. There had been more than one med error, but you
8 hadn't received counseling about that; is that correct?

9 A. No.

10 Q. All right.

11 A. I'm sorry. Yes, that's correct.

12 (Laughter.)

13 Q. (By MR. REID) Sorry. That was a bad question.

14 But, thank you.

15 Now, when you wrote this e-mail on May 25th, 2010,
16 you were no longer employed, right?

17 A. Correct.

18 Q. Okay. And what, if anything, was your level of
19 concern about the staffing levels at Emerald Hills as of
20 that date?

21 A. Well, as of that date, Tieunda Morgan was the only
22 other p.m. med tech. So I was worried about how they were
23 going to cover my shift.

24 Q. Okay. And, what, if any, concerns did you have as
25 of May 25, 2010, as to whether the residents needs were
26 being met?

27 A. The same as when I was working there. Um, from
28 quality of care, to medication, to their basic needs being

1 met.

2 Q. Okay. Was there a reason that you didn't mention
3 those concerns in this -- in this last e-mail you wrote on
4 May 25th, 2010 to the Ethics First Hotline?

5 A. Um, at that time I was concentrating on just that.
6 I had been just let go, so I really didn't feel that they
7 were going to listen to me anyways, if they did not listen
8 to me previously when I did work for them.

9 Q. Okay. Now, do -- have you seen any other documents
10 written by you that put in writing concerns that you had
11 about the level of staffing at Emerald Hills?

12 A. Only at the time that I wrote them.

13 Q. Okay. And have you seen them? Have they been shown
14 to you recently?

15 A. No.

16 MR. REID: Thank you.

17 Q. (By MR. REID) Before -- before lunch we were
18 talking about you as a mandated reporter.

19 Do you have that testimony in mind?

20 A. Yes.

21 Q. Have you ever filed a report of suspected neglect or
22 abuse as a mandated reporter?

23 And let me be specific. So I'll ask the question a
24 different way.

25 Have you ever filed a report of suspected neglect or
26 abuse with the local ombudsman?

27 A. No.

28 Q. How about with the local law enforcement agency?

1 A. No.

2 Q. Was there ever a time that you had an understanding
3 of an obligation that you had as a mandated reporter that
4 if you suspected neglect of an elder you had to report that
5 to the ombudsman?

6 A. I understood it. Yes.

7 Q. Okay. Now, if you will bear with me, I want to go
8 back and focus on that fall of 2008 time frame. Okay?

9 A. Okay.

10 Q. Fall of 2008, the managers of Emerald Hills were all
11 different than when your employment was terminated, except
12 for Chris, the maintenance guy, correct?

13 A. Correct.

14 Q. And we talked before that you remember giving --
15 making -- having an interview with an investigator that
16 works with our firm representing Emeritus.

17 A. Yes.

18 Q. Have you -- have you had an opportunity to meet with
19 Miss Clement and talk to her about your testimony?

20 A. Yes.

21 Q. And how many times have you met with Miss Clement to
22 talk about your testimony?

23 A. Once.

24 Q. When was that?

25 A. Um, December, 2012.

26 Q. And did you discuss your testimony or documents or
27 anything about the case over the lunch break today with
28 anyone?

1 A. Um, I reviewed Mrs. Boice's resident file.

2 Q. Okay. Did you review that with somebody or by
3 yourself?

4 A. Um, they just handed it to me to look through.

5 Q. Okay. Did that refresh your memory about Mrs. Boice
6 at all, flipping through that record?

7 A. Yes.

8 Q. Okay. Good. Because I wanted to ask you some
9 questions about that. So, thank you.

10 Now, with regard -- let me first ask you, do you
11 have any memory of Mrs. Boice's husband, Myron Boice?

12 A. Yes.

13 Q. Tell the jury what you remember about Myron Boice.

14 A. He was very involved with Joan. He would come down
15 all the time and spend time with her. He would sit there
16 while she ate. Very concerned. He would try to speak with
17 Nancy all the time. Wasn't usually able to, so he would
18 voice his concerns to us.

19 Q. Okay. So let me see -- I want to focus on what you
20 observed and heard. Okay?

21 What did you observe or hear Myron Boice do with
22 regard to his wife when she was in the Memory Care Unit?

23 A. Well, he would ask why she isn't using her walker.
24 She -- he would ask how much she's been eating. Why hasn't
25 she been eating this much? Or if she was in bed, why is
26 she in bed? What has she done today? What activities did
27 she do today? You know, has she had her shower? Has she
28 had her meds?

1 Q. Okay. And would he ask those questions to you?

2 A. Not directly to me, no.

3 Q. Okay. Would his questions get answered?

4 A. Yes.

5 Q. Now, would you -- did you ever observe Mr. Myron
6 Boice with his wife during meal times in the memory care
7 area?

8 A. Yes.

9 Q. Okay. And what did you observe Mr. Myron Boice
10 doing with his wife during the meal times?

11 A. Feeding her.

12 Q. Okay. What does that mean, "feeding her"?

13 A. Spoon-feeding her, fork-feeding her. This was more
14 towards the end, okay. In the beginning, he would just
15 come and sit with her and have dinner with her. That's the
16 meal I was there for. So he would sit there and have
17 dinner with her.

18 Q. Okay. So in terms of -- was -- do you have a memory
19 of how long Mrs. Boice was at Emerald Hills?

20 A. Months.

21 Q. A few months?

22 A. Yeah. Just a few months, yeah.

23 Q. Okay. And in terms of Mrs. Boice's condition when
24 she first moved in to the Memory Care Unit compared to the
25 latter, say, weeks, did you observe a change in her
26 abilities?

27 A. Drastically.

28 Q. Okay. Well, tell us about that.

1 A. Well, when she came in, she was very verbal. She
2 was walking with her walker with someone just walking
3 besides her. She was eating. You know, she would have
4 conversations with us. At the end, she was in bed, not
5 talking, not eating. She wasn't even able to bear weight
6 on her feet.

7 Q. Okay. And when -- at that point in time, when she
8 became less mobile and she was staying in bed, or she was
9 in the wheelchair, did you personally have any involvement
10 with repositioning Ms. Boice?

11 A. Yes.

12 Q. Tell the jury what you personally did.

13 A. Well, me and either one or two other RAs would have
14 a sheet underneath her. It was kind of mid-thigh to like
15 upper torso. Two people would hold up the sheet and then
16 one person would kind of lift her up. And then we would
17 put like a pillow under her back and then a pillow in
18 between her legs for support.

19 Q. Okay. And how often would you make efforts to
20 reposition Mrs. Boice?

21 A. If we weren't trying to get her up out of bed, it
22 would be like every few hours.

23 Q. Okay. Have you ever -- do you have a recollection
24 of ever telling anyone that -- that you -- that the efforts
25 to reposition would occur every 30 to 60 minutes?

26 A. Um, no.

27 Q. How about when she was in her wheelchair? Did
28 you -- were you involved in efforts to relieve pressure

1 from parts of her body while she was in her wheelchair?

2 A. Um, if so, I think her feet.

3 Q. Okay. And tell the jury what you would do to try to
4 avoid the pressure on her feet when she's in the
5 wheelchair.

6 A. We would put a pillow underneath her foot.

7 Q. Okay. How about her rear end? Remember doing
8 anything?

9 A. Yes. I think there would be a pillow at the -- you
10 know, on the wheelchair, too.

11 Q. And did somebody train you in terms of -- or what
12 were you -- what was your training with regard to making
13 these efforts to reposition someone like Ms. Boice?

14 A. Um, the fellow coworkers who had previous experience
15 with bedsores would tell me they needed to be repositioned
16 and let pressure off of that sore.

17 Q. So then -- I think I understand, but can you tell
18 the jury why the efforts were being made to reposition
19 Mrs. Boice when she was either in bed or in her wheelchair.

20 A. So the sores weren't going to get worse.

21 Q. Okay. Now, we've -- we talked about your
22 relationship with Peggy Stevenson and Alicia Parga. I
23 don't think I asked you. Tell me about your relationship
24 with Nancy Cordova, the executive director.

25 A. Um, we had an okay relationship. I mean, we would
26 talk seldomly. I mean, it wasn't a very personal
27 relationship I guess you could say.

28 Q. Okay. At that point in time, when you had that

1 leadership team, as opposed to the one in May of 2010, how
2 would you describe Emeritus as a company to work for?

3 A. I liked working for Nancy and Peggy better than I
4 did any other supervisors that I had.

5 Q. Okay. Why is that?

6 A. They seemed to be more willing to listen to me.

7 Q. Okay. Did -- since you were working that kind of
8 swing shift, from 2:00 to 10:00 p.m., were Nancy and/or
9 Peggy available to you to call and ask questions if -- if a
10 question arose?

11 A. Um, we would -- we could call them, but we hardly
12 ever got an answer.

13 Q. Have you ever described Emerald Hills as a great
14 place to work?

15 A. I might have described that the first maybe month or
16 two I was working there, yeah.

17 Q. Now, as Miss -- Mrs. Boice's condition worsened
18 during that time frame, do you have any recollection of
19 having home health -- or being involved with home health
20 providers for Mrs. Boice?

21 A. I saw them come in and take care of her.

22 Q. Okay. And can -- tell the jury what you observed
23 the home health folks doing with Mrs. Boice.

24 A. Dressing her pressure sores.

25 Q. Okay. And anything else?

26 A. Um, they might have given her a suppository.

27 Q. All right. Were you involved in any training with
28 the home health staff?

1 MS. CLEMENT: Objection; vague.

2 Is it to Mrs. Boice, or...

3 THE COURT: Is it as to Mrs. Boice?

4 MR. REID: It is as to Mrs. --

5 THE COURT: Could you rephrase, please.

6 MR. REID: I will.

7 Q. (By MR. REID) With regard to the home health folks
8 that were coming in and providing care to Mrs. Boice,
9 did -- tell the jury what, if any, training you received
10 from those people.

11 A. Well, I wouldn't say training, but I did ask them,
12 "How do you dress her wounds?" Because she would -- the
13 nurses would only come in one or two times a week. And the
14 wounds would not get changed unless they were there or
15 unless us, the caregivers, did it. And I wanted to be able
16 to do it correctly.

17 Q. Okay. I think you misspoke, and I want to clarify.
18 The dressings wouldn't get changed unless the nurses
19 were there; is that what you just said?

20 A. Unless the -- yeah, the home health care nurses were
21 there.

22 Q. Right. Okay.

23 So then -- I'm sorry. I want to make sure I have
24 this. You asked the nurses to instruct you about what?

25 A. How to dress them, how to clean them, how to put the
26 cotton swabs and stuff back on, what kind of ointment to
27 use with them. Because with showering her, we would have
28 to redress them after, like, she showered or used the

1 bathroom.

2 Q. Okay. And then so when you asked the home health
3 nurses for that input, what did they do?

4 A. They told us to watch while they did it.

5 Q. All right. And did you have any control over how
6 often the home health nurses would come in and see
7 Mrs. Boice?

8 A. No.

9 Q. Do you recall any -- any -- I'm going to say
10 "disciplines" other than nursing coming in to provide
11 services to Mrs. Boice?

12 A. Disciplines?

13 Q. In terms of healthcare providers, other than nurses.

14 A. I don't believe so.

15 Q. Do you have any memory of a physical therapist
16 coming in at any point in time for Mrs. Boice?

17 A. I don't.

18 Q. Now, that instruction that you've described, did
19 you -- was there ever an occasion that you actually did
20 those things for Mrs. Boice?

21 A. Yes.

22 Q. And when you did those things, did -- did you --
23 were you concerned that you weren't doing it well?

24 A. That, and that since I wasn't licensed to do it, if
25 I was really going to get in trouble about it. I had told
26 Peggy about us doing it. She said, *Just don't let anybody*
27 *know.*

28 Q. Okay. How long was this going on?

1 A. Um, well, pretty much since her fall.

2 Q. Since her fall?

3 A. Yes.

4 Q. And that was in late September of the -- of 2007?
5 Do you recall?

6 A. I think so. Yes.

7 Q. When Miss Clement was asking you questions, she
8 showed you some photos which we hadn't shown the jury yet,
9 but of different wounds on Mrs. Boice's body.

10 Do you have that in mind?

11 A. Yes.

12 Q. When you were meeting -- when you met with
13 Miss Clement in December, did she show you those pictures?

14 A. Yes.

15 Q. What else did she show you?

16 A. A picture of Joan, like her face. And asked me if I
17 remembered her.

18 Q. Okay. Did she show you portions of depositions from
19 other witnesses?

20 A. Yes.

21 Q. Did she offer to you any comments about what she
22 thought of those people as she was showing you the
23 depositions?

24 A. Um, she wasn't the one showing me the depositions.
25 Actually, her assistant was.

26 Q. Was there ever a time anyone offered you -- from
27 Miss Clement's office -- an opinion about what they thought
28 of the witnesses who were testifying?

1 A. No. They pretty much let me form my own opinion.

2 Q. Okay. Those -- those wounds that you saw in the
3 pictures, when is -- in that three month time frame that
4 Ms. Boice was there -- well, why don't we use the fall as
5 the starting point.

6 When do you recall Ms. Boice having those wounds in
7 relation to the fall?

8 A. I'd have to say, like, I remember the one on her
9 heel and the one on her bottom. Maybe like -- I would have
10 to say a week or two after her fall, we started noticing
11 like red marks.

12 Q. Do you recall -- sorry.

13 Did you -- in the week or -- in the week or two
14 after the fall, did you make any contact with any
15 healthcare providers to discuss Ms. Boice's condition?

16 A. Not personally, no.

17 Q. One last area I wanted to ask a couple questions
18 about. When Miss Clement was talking to you this morning,
19 you said something about the caregivers taking orders for
20 food. And I just wanted to understand the context of that.
21 Okay?

22 Your shift, 2:00 to 10:00, included the dinner --
23 dinner hour, right?

24 A. Yes.

25 Q. So what was your involvement as a med tech in
26 getting -- having the residents in the assisted living side
27 have dinner?

28 A. Before we got our dining staff, which I believe we

1 got our dining staff at the end of 2009, I would have to
2 help the RAs serve dinner. I would go to a resident, tell
3 them what they were -- what was on the menu. They could
4 choose to have that, or they could choose to have a grilled
5 cheese sandwich. Then I would go and I would tell the cook
6 at the time what that resident chose, and then we would
7 bring it back out to the resident.

8 Q. In the dining room?

9 A. In the dining room.

10 Q. Okay. So it sounds like you were a waitress, in
11 addition to your other duties?

12 A. Yes.

13 Q. I gotcha. Okay.

14 And then at some point in time that changed?

15 A. Yes.

16 Q. And how did that change?

17 A. After RAs complained a lot.

18 Q. What changed?

19 A. Dining staff came in. We had separate employees
20 just for the meal times.

21 MR. REID: Those are all the questions I have.

22 Thank you very much.

23 THE COURT: Miss Clement.

24 MS. CLEMENT: Yes. Thank you, Judge.

25 RECROSS-EXAMINATION

26 BY LESLEY A. CLEMENT, Attorney at Law, Counsel on behalf of
27 the Plaintiffs:

28 Q. With regard to the dining -- your dining duties for

1 the p.m. shift, did you ever have any concerns about the
2 food that was being offered to the residents?

3 A. Yes.

4 Q. And what were those concerns? Can you tell the
5 jurors.

6 A. Well, with the amount of money that these residents
7 paid to live there, I didn't feel that --

8 MR. REID: Objection, your Honor. It's
9 nonresponsive.

10 THE COURT: Overruled.

11 THE WITNESS: I didn't feel that the type of or
12 quality of food that they got was right.

13 Um, with the RAs having to help with the bathroom,
14 or giving showers, or any type of house cleaning, with the
15 same clothes, we would also have to go in and serve food.
16 Many RAs asked for aprons to cover up with, and we were
17 denied that because it wasn't in the budget.

18 Q. (By MS. CLEMENT) So are you saying that you would
19 have concerns not only about the quality of the food, but
20 serving the food to the residents because you would have
21 the residents' waste, feces, whatever, on your clothes and
22 then you would have to go serve the residents?

23 A. Yes.

24 Q. You talked about -- well, let me just ask you this:
25 Why was that so disturbing to you?

26 A. Because I knew what I did to take care of the
27 residents in the restroom. And knowing that I'm now
28 handling their food and placing it in front of them and

1 then they have to eat, I wouldn't even want to eat after
2 that.

3 Q. You said that you would -- when you were doing your
4 waiting -- wait-staff-type duties with the residents that
5 you would ask them what they wanted to eat.

6 Was there a full menu for them, or...

7 A. No. It was just what the cook had cooked for that
8 evening. Let's say lasagna. "Would you like lasagna?"
9 They would either say "yes" or "no." If they said no, then
10 we have grilled cheese or a deli sandwich. Then they got
11 to choose between a grilled cheese or a deli sandwich.

12 Q. Were there special -- well, never mind.

13 Today at the lunch break I gave you Mrs. Boice's
14 entire chart, true?

15 A. True.

16 Q. What did I ask you to look for?

17 A. Care alerts.

18 Q. How many care alerts did you find?

19 A. One.

20 Q. Did you find any of the care alerts that you wrote
21 for Joan?

22 A. No.

23 Q. Is the only care alert you found the one that
24 Heather Dunlap did on November 30th?

25 A. Correct.

26 Q. How many care alerts can you estimate that you did
27 for Joan?

28 A. Between six and eight.

1 Q. And the nature of those care alerts, were those with
2 regard, at least in part, to the red marks and the
3 worsening of the pressure ulcers that you saw on Joan?

4 A. Yes.

5 Q. Did you ever see Peggy Stevenson come and look at
6 Joan's pressure ulcers after you had alerted her to --
7 through your care alerts -- the fact that she was getting
8 pressure ulcers and they were getting worse?

9 A. No.

10 Q. You thought that Nancy and Peggy were the best of
11 the supervisors that you had; is that right?

12 A. Yes.

13 Q. And that at least they would be more willing to
14 listen to you and the concerns that you raised about
15 staffing and the level of care of the residents, that
16 residents needed to be moved out of there; is that right?

17 A. Yes.

18 Q. Did they do anything about those concerns?

19 A. No.

20 Q. Did they tell you why they didn't do anything about
21 them?

22 A. It wasn't in our budget.

23 Q. When -- this repositioning that you described doing
24 of Joan every few hours or so, that was when you would be
25 there in the -- in the Memory Care Unit?

26 A. Well, I would get -- usually a resident assistant
27 would call me and ask me to help them reposition her.

28 Q. And was that at the very end of Mrs. Boice stay when

1 she couldn't turn at all?

2 A. Yes.

3 Q. And was that once the bedsores were open, like the
4 one on her bottom, and you could see in?

5 A. Yes.

6 Q. And this pillow that you put under her feet, was
7 that just like a regular pillow?

8 A. Yes.

9 Q. And would her feet normally be resting on the metal
10 footplates on her wheelchair?

11 A. Um, usually, if we didn't have the pillow there.
12 Sometimes the pillow would get loose and get kicked off.

13 Q. And how about before you noticed the open bedsore on
14 her foot, before that, was -- were her feet just sitting on
15 those metal rest plates?

16 A. Yes.

17 Q. And did she just wear little like slipper socks,
18 just those little socks?

19 A. Yes.

20 Q. And the pillow that you guys put on the wheelchair,
21 was that after the open sore on her bottom?

22 A. Yes.

23 Q. And was that just a regular pillow like you'd have
24 in your bed?

25 A. Yes.

26 (Pause.)

27 Q. (By MS. CLEMENT) With regard to the medication
28 errors that you observed at the facility that you thought

1 were worse than the medication error you did, were there
2 ever problems with regard to the narcotics?

3 A. Yes.

4 Q. And what were the problems you observed with regard
5 to the narcotics?

6 A. Um, well, the narcotics would be off count. Um,
7 sometimes there would be the wrong kind of narcotic in
8 our -- in our narcotics cabinet.

9 Q. So were there times where the narcotics weren't
10 matching what the resident was supposed to be getting?

11 A. Yes.

12 Q. Did you ever have concerns that the narcotics were
13 being stolen from the residents?

14 A. Yes.

15 Q. And did you bring that up with your supervisors?

16 A. Yes.

17 Q. To your knowledge, was anybody -- was there ever any
18 investigation done into narcotics being stolen?

19 A. Um, I believe so.

20 Q. Do you know what the result was, if anything, of
21 that investigation? Were you told?

22 A. I don't. But I believe it was when Rich Lee was the
23 executive director.

24 Q. Were you ever given any training by a nurse or a
25 speech therapist as to how you were supposed to help
26 residents eat if they had difficulty eating?

27 A. No.

28 Q. Were you told you weren't allowed to feed the

1 residents?

2 A. Yes.

3 Q. And were you told why you weren't allowed to feed
4 the residents?

5 A. We were not a skilled facility.

6 Q. Did you try to feed the residents yourself anyway?

7 A. Yes.

8 Q. You spoke a little bit about agitated residents.

9 Was that an unusual occurrence at the facility, for
10 you to get punched by a resident?

11 A. Yes.

12 Q. How often would you say that would happen, that you
13 would get punched?

14 A. Every other day.

15 (Laughter.)

16 Q. (By MS. CLEMENT) Was it only in the memory care
17 side, or was it in the other part of the building as well,
18 assisted living?

19 A. Usually only in the memory care.

20 Q. How about this business of redirecting residents?
21 Were there ever episodes that you participated in where you
22 found out that residents had, for lack of a better word,
23 escaped from the memory care?

24 A. Yes.

25 Q. And how about residents that were in the assisted
26 living side that had dementia? Were those residents ever
27 lost, or got lost?

28 A. Yes.

1 Q. Do you remember any specific instances where
2 residents were -- where you were not able to find residents
3 who belonged in the facility that had dementia?

4 MR. REID: It's irrelevant and 352, your Honor.
5 It's also beyond the scope.

6 MS. CLEMENT: It goes right to redirect, your Honor.

7 THE COURT: What is the relevance?

8 MS. CLEMENT: It goes right to staffing, your Honor,
9 and the acuity of the residents in the facility.

10 THE COURT: Counsel approach, please.

11 (Whereupon an unreported bench conference was then
12 had in open court between the Court and counsel.)

13 THE COURT: Please rephrase.

14 MS. CLEMENT: Sure.

15 Q. (By MS. CLEMENT) In the fall of 2008, did you ever
16 have episodes where residents wandered away from the
17 facility and you would need to go look for them?

18 A. Yes.

19 Q. And can you describe for the jury episodes that you
20 recall happening, where you and others would have to leave
21 and look for residents?

22 A. Um, there was residents that were boyfriend and
23 girlfriend, a couple. They would always go on long walks.
24 One time they made it all the way out to Highway 49 and was
25 trying to cross it.

26 Another incident was they were on a walk, and as
27 they were coming back to the building, the daughter had
28 picked up the lady to go out for lunch and to get her hair

1 done. From the time it took the man to walk into our
2 building, which had to be like 15 feet, he had forgot that
3 his wife -- or his girlfriend was just picked up. And he
4 told us that she went missing. So we searched everywhere
5 for her, in the fields behind our facility and the
6 buildings surrounding our facility, for about four hours,
7 until she was brought back to our facility by the daughter.

8 Q. Is that couple that you just described, were they
9 living in the Memory Care Unit?

10 A. No. They were in the assisted living.

11 Q. And when you guys were all out in the field behind
12 Emerald Hills, looking for the residents, who was inside
13 caring for them?

14 MR. REID: That assumes facts not established, your
15 Honor. It's argumentative as phrased.

16 MS. CLEMENT: I'll rephrase.

17 THE COURT: All right.

18 Q. (By MS. CLEMENT) Were you the only person who went
19 out looking for the residents that was missing?

20 A. No.

21 Q. And when residents would go missing, would you be
22 the only person who would go?

23 A. No.

24 Q. Would the practice be for all hands on deck to go
25 out and start looking for the resident who was missing?

26 MR. REID: It's vague, your Honor.

27 THE COURT: Rephrase.

28 Q. (By MS. CLEMENT) Was it the practice that everyone

1 who was available would go look for residents when they
2 went missing?

3 A. Yes.

4 Q. Who would be left in the facility to watch the
5 residents who were there when everybody was out looking for
6 the missing resident?

7 A. If there were -- like the concierge or the
8 maintenance man, then maybe like one or two caregivers at
9 the most.

10 Q. So about activities that you were involved in in the
11 Memory Care Unit, you would go do that on your break?

12 A. Yes.

13 Q. And that would be on the p.m. shift?

14 A. Yes.

15 Q. So how many minutes on your shift would you get --
16 have time to go do that?

17 A. Well, we get one ten-minute break and then we get a
18 half-hour lunch.

19 Q. So were you able -- did you have time every day that
20 you worked to go do some activities in the Memory Care
21 Unit?

22 A. No.

23 Q. How frequently did you actually have time to go do
24 that?

25 A. Hmm, maybe if I tried hard, once a week.

26 MS. CLEMENT: Thank you. No other questions. Thank
27 you, your Honor.

28 ///

1 FURTHER REDIRECT EXAMINATION

2 BY BRYAN R. REID, Attorney at Law, Counsel on behalf of the
3 Defendant:

4 Q. Just very briefly, Miss Hitt. I wanted to follow up
5 on the care alerts you remember writing concerning
6 Ms. Boice. Okay?

7 A. Okay.

8 Q. First, let me ask you, I mean you do have some
9 memory of Ms. Boice, right?

10 A. Yes.

11 Q. And was -- can you describe for the jury whether --
12 what your relationship was with Ms. Boice.

13 A. Um, I was her caretaker. She recognized me. She
14 knew who I was, but she did have closer relationships to
15 other caregivers.

16 Q. Okay. And tell the jury what you mean by that.

17 A. By a "closer relationship"?

18 Q. With the other caregivers, as you observed.

19 A. Yeah. She just knew them better because they were
20 more involved with her care than I was. They were there
21 more throughout her care than I was.

22 Q. Okay. So even -- even though she was closer to
23 other caregivers, what, if any, importance did you place on
24 Mrs. Boice's needs?

25 A. I would help her transfer. I helped care for her
26 wounds. I helped shower her. I helped take her to the
27 bathroom. I helped out in the dining room when she was
28 there.

1 Q. Okay. So on the occasions that you were there, did
2 you -- what did you do with -- did you look for Ms. Boice
3 to see -- to assist her? Did you single her out, or were
4 you giving care to whoever needed it?

5 A. Giving care to whoever needed it.

6 Q. Okay. So on those occasions, it was Mrs. Boice that
7 you were working with?

8 A. Yes.

9 Q. And so then after you wrote six to eight care alerts
10 and there was no -- apparently, no response from anyone as
11 far as you knew, what did you do?

12 A. Talked to our regional nurse.

13 Q. Who was that?

14 A. Doris Marshall.

15 Q. And what did you -- what did you tell Miss Marshall?

16 A. I told Miss Marshall that I felt that she needed a
17 higher level of care than we could provide her and that we
18 needed to find a facility that could do those things.

19 Q. Sure.

20 And how did you get ahold of Miss Marshall?

21 A. She was in our building.

22 Q. When was that?

23 A. Sometime -- she was in our building quite often
24 throughout the whole time I worked there, so I probably
25 couldn't pinpoint exactly when she was there. Um,
26 probably -- maybe September or November of 2008.

27 Q. Okay. Well, that pretty much covers when she was
28 there. So I don't want you to guess.

1 Can you give us an estimate of when it was that you
2 told Ms. Marshall that you thought Ms. Boice needed a
3 higher level of care?

4 A. Probably, um, November.

5 Q. Okay. And were you -- what information did you have
6 in November of 2008 in terms of efforts that were -- if
7 any, were taking place to seek a different level of care
8 for Mrs. Boice?

9 A. Besides what the caregivers were trying to do by
10 talking to the supervisors, nothing. Supervisors never
11 came and told us what they were trying to do.

12 Q. Okay. I think my question is a little bit
13 different.

14 A. Okay.

15 Q. I just want to know what information you had in
16 November of 2008 concerning efforts that -- if any, that
17 were taking place to seek a different level of care for
18 Mrs. Boice.

19 A. I didn't have any information.

20 Q. Okay. Thank you.

21 MR. REID: That's all the questions.

22 THE COURT: Miss Clement?

23 MS. CLEMENT: No. None, your Honor.

24 THE COURT: Ladies and gentlemen, do you have any
25 questions for Miss Hitt?

26 THE COURT ATTENDANT: Thank you.

27 THE WITNESS: Sir? He has (indicating).

28 THE COURT ATTENDANT: Okay. Thank you.

1 THE COURT: Okay. Please approach.

2 (Whereupon an unreported bench conference was then
3 had in open court between the Court and counsel.)

4 THE COURT: Okay. We let our jurors ask questions.
5 And sometimes they ask questions for further clarification
6 or, perhaps, they may not have heard a response. So don't
7 worry if you feel like you've answered the question
8 already. Just go ahead and respond to the question.

9 THE WITNESS: Okay.

10 THE COURT: And if you don't understand the
11 question, tell me that.

12 THE WITNESS: Okay.

13 THE COURT: Referring back to the gas leak that you
14 referenced earlier, did you have to evacuate the residents
15 during the gas leak?

16 THE WITNESS: No, we did not.

17 THE COURT: How often did activities such as singing
18 and bingo take place while you were there?

19 THE WITNESS: Um, for memory care?

20 THE COURT: Well, you can break it down.

21 THE WITNESS: For memory care, on the p.m. shift, we
22 tried to have at least one activity a day. For AL side,
23 they had their own activities director, which they had
24 multiple activities throughout the day.

25 THE COURT: Would you say that these activities in
26 memory care were done once a week? Once every day?
27 They're just trying to get some sense of how often.

28 THE WITNESS: Usually on the p.m. shift we tried to

1 do at least one thing every day. Sometimes we wouldn't be
2 able to. So at least once every other day.

3 THE COURT: Do the residents in the assisted living
4 facility get showers daily?

5 THE WITNESS: Some of 'em. The ones that are more
6 able to ask for them or knowing. The ones in memory care,
7 the more high-functioning ones that are more willing to do
8 showers, they like showers, yes, they usually got showers
9 every day. The more challenging residents, sometimes we
10 weren't able to give them showers every day.

11 THE COURT: What was your understanding of the
12 protocol if, after 5:00 p.m., someone had to be taken to
13 the hospital? How would that happen?

14 THE WITNESS: Um, usually the med tech on duty would
15 be called to the situation and they would assess if we were
16 to call 911. If it was decided that they went out, then
17 we would get their paperwork. And we would give it to the
18 AMR, or the transport. And then after the resident left
19 the facility, we would usually call the family members.
20 And then they would go to the hospital with them.

21 THE COURT: Was there any kind of a written protocol
22 for what to do if you had to call or send someone to a
23 hospital?

24 THE WITNESS: Written -- there was no written
25 protocol, no.

26 THE COURT: Who told you that you needed to give the
27 residents their injections?

28 THE WITNESS: Um, it was pretty much just mandatory.

1 It was a medication. The med techs needed to give it.

2 THE COURT: This person was asking who. Did anybody
3 in particular tell you?

4 THE WITNESS: The nurse usually.

5 THE COURT: Were you aware that med techs should not
6 be giving injections?

7 THE WITNESS: I wasn't aware of that rule until
8 after some time of me working there. I'd probably say
9 maybe like a year-and-a-half after me working there. I
10 wasn't aware of that, we weren't allowed to give insulin.

11 THE COURT: Why did you leave Target?

12 THE WITNESS: I was still in high school. And I
13 really didn't have transportation to Target, so it made it
14 really rough after I got out of school to get there. And
15 plus, it was pretty hard to do all of my homework and plus
16 have a half-time/part-time job at Target, especially during
17 the holiday season.

18 THE COURT: Other than being fired from
19 Emerald Hills that you talked about, have you ever been
20 fired or asked to leave any other employment?

21 THE WITNESS: No.

22 THE COURT: Please tell us what your educational
23 background is.

24 THE WITNESS: Um, grade 11. Was my highest
25 education.

26 THE COURT: Were you asked at any time to provide
27 documents to your supervising -- supervisor showing that
28 certain medications were not given to a resident?

1 THE WITNESS: No.

2 THE COURT: Were you asked to provide any documents
3 to your supervisor showing that medications were given late
4 or incorrectly?

5 THE WITNESS: No.

6 THE COURT: How would your supervisor know that
7 medications were not given properly?

8 THE WITNESS: Um, they usually wouldn't know, not
9 unless we brought it up to them.

10 THE COURT: As the med tech -- this juror wants to
11 know -- if you were responsible for the medications, how
12 do you believe that other people could have gotten ahold of
13 the medications improperly?

14 THE WITNESS: Um, they would have been also a
15 medication technician.

16 THE COURT: Have you personally ever given
17 Mrs. Boice an incorrect medication?

18 THE WITNESS: I personally never gave Mrs. Boice
19 medications. The only time I can remember is probably one
20 as-needed medication. I did not give her her medications
21 normally.

22 THE COURT: This juror wants to know, how long were
23 any meetings preparing you for your testimony here today?

24 THE WITNESS: Um, maybe anywhere from an hour to
25 hour-and-a-half.

26 THE COURT: When you left Emerald Hills, where did
27 you go to work?

28 THE WITNESS: Um, since then, I've been a

1 stay-at-home mom.

2 THE COURT: Are you currently working now?

3 THE WITNESS: No.

4 THE COURT: You told us earlier today that an
5 investigator, I believe with Emeritus, talked to you.

6 Is that correct?

7 THE WITNESS: Yes.

8 THE COURT: How long did that investigator talk with
9 you?

10 THE WITNESS: Um, well, this weekend, it was just
11 maybe like ten minutes or so. But I also spoke to him
12 probably about two years ago, and that was probably maybe
13 two hours or so we talked.

14 THE COURT: What did he ask you about?

15 THE WITNESS: Mostly about Joan Boice and my
16 position at Emerald Hills.

17 THE COURT: Did the investigator try to change how
18 you would answer questions while being a witness?

19 THE WITNESS: No.

20 THE COURT: Could you estimate for this juror on how
21 many occasions you may have given injections.

22 THE WITNESS: Um, to insulin, there were two
23 residents that I gave injections to daily.

24 THE COURT: So for how long a period of time would
25 that be?

26 THE WITNESS: Um, probably two years.

27 THE COURT: Could you estimate, please, for this
28 juror on how many occasions you have taken care of wounds

1 or wound care for residents.

2 THE WITNESS: I would say multiple times. Um, I
3 took care of just Joan Boice's probably 15 to 20 times.

4 THE COURT: Why did you not contact the Department
5 of Social Services about Mrs. Boice after writing several
6 care alerts with no results?

7 THE WITNESS: Um, after contacting my supervisor and
8 then my ED, and then the regional director, me going as far
9 as the regional director, I really felt that if they were
10 there for the same purpose I was that they would do
11 something about it.

12 THE COURT: How often did someone in the Memory Care
13 Unit ask for assistance by walkie-talkie?

14 THE WITNESS: Multiple times a day.

15 THE COURT: It was mentioned that Peggy Stevenson
16 and Nancy Cordova did not do regular audits of your work.

17 How then did they document any medical errors that
18 you reportedly made?

19 THE WITNESS: Just the own med techs would spot
20 their own errors. It wasn't the supervisors catching them.

21 THE COURT: So would you document your own error?

22 THE WITNESS: Yes.

23 THE COURT: Were any reports generated with respect
24 to any errors that you documented?

25 THE WITNESS: We would contact family members or the
26 doctors.

27 THE COURT: Were these contacts to family members or
28 doctors, were they in writing?

1 THE WITNESS: Um, well, usually to the doctors, it
2 would be a fax. To family members, it would be a phone
3 call.

4 THE COURT: During any of your evaluations, did
5 anyone review these medical errors or raise concerns with
6 you about these medical errors?

7 THE WITNESS: Um, no. It was quite common
8 throughout all the med techs that we had in the building
9 that everybody had med errors. So it wasn't a very big
10 concern.

11 THE COURT: After Mary Kasuba left and there was no
12 nurse for a few months, did any nurse come in from the
13 outside to assist you?

14 THE WITNESS: Um, I believe there might have been
15 one from a different facility, yes.

16 THE COURT: Was there ever an incident at
17 Emerald Hills that you felt you should have reported elder
18 abuse or neglect?

19 And by this, I think they probably mean to the
20 Department of Social Services.

21 THE WITNESS: Um, from me speaking now, yes. I
22 believe there should have been times where I wouldn't have
23 taken my position as having a job so seriously or being so
24 worried about it and just going ahead and calling the
25 ombudsman, no matter if I was worried about getting fired
26 or not. Yeah.

27 THE COURT: If you can recall a specific incident
28 without giving us any names, what would that incident be?

1 THE WITNESS: Um, it would have to be the time where
2 the caregivers were arousing one of the residents in the
3 sitting area. And then after I reported it to one of the
4 regionals the next day, and then knowing that nothing was
5 done about it, I should have taken (sic) it further than
6 that and made sure that something was done about it.

7 THE COURT: This juror wants to know, are you aware
8 of Emeritus' employees who are in the courtroom today?

9 THE WITNESS: Um --

10 THE COURT: Do you recognize anybody in the
11 courtroom? Other than the people at the table.

12 THE WITNESS: Um --

13 THE COURT: And forget the jurors.

14 THE WITNESS: Yes.

15 THE COURT: Yes?

16 THE WITNESS: Yes. I recognize Joan Boice's son.

17 THE COURT: Do you recognize anybody from Emeritus?

18 THE WITNESS: No.

19 THE COURT: Do you know who Lisa Hulse is?

20 THE WITNESS: I've heard of her, yes.

21 THE COURT: Do you know if she's sitting in the
22 courtroom?

23 THE WITNESS: No.

24 THE COURT: No, you don't know or --

25 THE WITNESS: No, I do not know if she is sitting in
26 the courtroom.

27 THE COURT: Do you believe that all your concerns
28 and calls to the ethics hotline resulted in you being fired

1 from Emerald Hills?

2 THE WITNESS: Yes. I believe that was the reason
3 why I got fired from Emerald Hills.

4 THE COURT: Referring to the event where the man and
5 woman left and went for a walk. When the daughter picked
6 up her mother, was there a protocol which would have
7 required the daughter to have signed out or checked out her
8 parent before taking them?

9 THE WITNESS: Usually, yes. The family member that
10 would come and take the resident out, we did have a book in
11 our front area that they would just sign for the resident,
12 saying, *Hey, they're going with me.* But, of course, at
13 this time the family member did not sign the resident out.

14 THE COURT: Was there a nurse at Emerald Hills who
15 dressed any of the pressure sores for Mrs. Boice?

16 THE WITNESS: No.

17 THE COURT: Did you feel properly trained to run
18 Emerald Hills for the p.m. shift?

19 THE WITNESS: No, I did not.

20 THE COURT: Did anyone direct you to give insulin
21 injections to certain residents?

22 THE WITNESS: No.

23 THE COURT: Do you know the difference between
24 assisting residents in taking medication and administering
25 medications?

26 THE WITNESS: Yes, I know the difference.

27 THE COURT: Did you ever administer medications just
28 to save time?

1 THE WITNESS: Um, I wouldn't say to save time, no.
2 To make it easier for the resident, yes.

3 THE COURT: Did you ever have to fill out a
4 medication record before actually passing out the
5 medications to save time?

6 THE WITNESS: Hmm, we usually -- like the medication
7 record -- I think I know what you're talking about -- the
8 MARS is what we signed on what medication was given. We
9 usually signed that at the end of the night, so it would be
10 after I had given all my medications.

11 THE COURT: Do you feel that Emerald Hills was a
12 safe place for residents to stay?

13 THE WITNESS: No, I do not.

14 THE COURT: If you ever needed assisted living care,
15 would you stay at Emerald Hills?

16 THE WITNESS: No, I would not.

17 THE COURT: If you had dementia, would you stay --
18 that's assuming you knew -- would you stay at
19 Emerald Hills?

20 THE WITNESS: No, I would not.

21 THE COURT: Could you estimate for us how often you
22 would call a memory care person to help you when you were
23 on the assisted living side, or how frequently?

24 THE WITNESS: Hmm. Um, I would say quite
25 frequently, especially when it was only me on the AL side.
26 Because we did have residents that were quite heavy and we
27 did have residents that needed two people to assist them.
28 So I wasn't able to assist them by myself safely, so I

1 would ask one of the stronger residents from memory care to
2 come over and help me, yeah.

3 THE COURT: Were there occasions when the memory
4 care residents were left completely uncovered, meaning
5 without anybody else?

6 THE WITNESS: Yes.

7 THE COURT: How -- on how many occasions would you
8 estimate this happened?

9 THE WITNESS: Multiple times.

10 THE COURT: You mentioned that it often took more
11 than one person to help a resident.

12 When you worked the overnight shift, how often would
13 you say that residents needed assistance in the middle of
14 the night?

15 THE WITNESS: Hmm, we had quite a few residents that
16 were -- that pushed their call buttons quite a bit. So --
17 and it -- it just depended on the night, I guess.

18 THE COURT: Do you know if there were any other
19 med techs that were fired?

20 THE WITNESS: Um, before me or after me? I'm not so
21 sure about before me. But after me, yes.

22 THE COURT: Do you know why?

23 THE WITNESS: Um --

24 THE COURT: That's just a "yes" or "no" answer.

25 THE WITNESS: Yes.

26 THE COURT: And how did you find out why they were
27 fired?

28 THE WITNESS: Um, I am friends with them on

1 Facebook.

2 THE COURT: When you reported to your supervisors
3 things that you thought might be neglect or abuse, what was
4 your understanding of what you thought your supervisors
5 would do with that information?

6 THE WITNESS: I understood that they would make a
7 report and then send it to their supervisor, and then that
8 their supervisor would then investigate it and maybe even
9 talk to their supervisors about what was going on.

10 THE COURT: As a med tech, did you help with dinner
11 before or after passing out the meds?

12 THE WITNESS: At the same time.

13 THE COURT: We heard there was a salad bar.
14 Could the residents ask an RA to fix them a salad?

15 THE WITNESS: Usually they only had salad at
16 lunchtime.

17 THE COURT: Was the salad bar well stocked?

18 THE WITNESS: Um, the salad bar was probably kind of
19 just like the mixed salad that you can buy in a bag at any
20 grocery store. And the cooks would pre put it in bowls and
21 they would just hand us a bowl.

22 THE COURT: Did you give any bed baths to the memory
23 care residents?

24 THE WITNESS: Yes.

25 THE COURT: When you did that, would you also make
26 notes of any bedsores you noticed, the same way you did
27 when you gave residents showers?

28 THE WITNESS: Yes.

1 THE COURT: This juror wants to know, assuming there
2 was a person who worked three successive shifts,
3 do you believe that someone doing that can provide proper
4 care to the residents?

5 THE WITNESS: No, I do not.

6 THE COURT: Did you ever have to take care of a
7 resident who used a catheter?

8 THE WITNESS: Yes.

9 THE COURT: Was -- did you as part of your job as a
10 med tech account for the morphine at the beginning and at
11 the end of each shift?

12 THE WITNESS: Yes.

13 THE COURT: Were you aware if anyone notified Joan
14 Boice's doctor about her bedsores?

15 THE WITNESS: Can you repeat that question.

16 THE COURT: Were you aware if anyone notified Joan
17 Boice's doctor about her bedsores?

18 THE WITNESS: Yes.

19 THE COURT: This juror wants to know that when the
20 lobby door was locked to the facility, how easy would it
21 have been to get out of the building in case of an
22 emergency?

23 THE WITNESS: Um, after it was locked -- it's just a
24 push door, so you would have been able just to push it open
25 from the inside.

26 THE COURT: After you were terminated or fired from
27 Emerald Hills, did you file a complaint with anyone?

28 THE WITNESS: Um, no.

1 THE COURT: Why not?

2 THE WITNESS: Um, even though I was devastated that
3 I couldn't be there with my residents -- the residents any
4 more, I was relieved that I didn't have to deal with
5 Emeritus any more.

6 THE COURT: Did you administer medication to
7 residents in the Memory Care Unit if they could not help
8 them -- help in any way in taking their meds?

9 THE WITNESS: Yes.

10 THE COURT: Miss Clement, you wish to follow up?

11 MS. CLEMENT: No, thank you. Thank you, your Honor.

12 THE COURT: Mr. Reid, do you wish to follow up?

13 MR. REID: Very -- very briefly.

14 FURTHER REDIRECT EXAMINATION

15 BY BRYAN R. REID, Attorney at Law, Counsel on behalf of the
16 Defendant:

17 Q. The Ethics First Hotline, were you able to report --
18 either identify yourself in the report or send it
19 anonymously?

20 A. Yes. You had a choice.

21 Q. Okay. And of those reports you remember filing, how
22 many of them were where you identified yourself and how
23 many of them were anonymous?

24 A. I'd probably say, um, half and half.

25 Q. Okay. That's all.

26 MR. REID: Thank you, your Honor.

27 THE COURT: Anything else, Miss Clement?

28 MS. CLEMENT: No, your Honor.

1 THE COURT: Ladies and gentlemen, do you have any
2 questions -- additional questions for our witness?

3 All right. May we excuse this witness?

4 MS. CLEMENT: Subject to recall.

5 THE COURT: All right. What that means is we're
6 going to excuse you today. If you get a phone call from
7 any of the attorneys -- it may or may not happen -- and
8 they ask you to come back, you'll need to come back.

9 Do you understand?

10 THE WITNESS: Yes.

11 THE COURT: All right. Thank you very much. You're
12 excused for today.

13 THE WITNESS: Thank you.

14 THE COURT: Ladies and gentlemen, we'll take our
15 afternoon break. Leave your notebooks on the chairs.
16 Remember the admonitions. Let's be back at 3:20 ready to
17 go.

18 We're in recess. Thank you.

19 MS. CLEMENT: Thank you.

20 (Recess.)

21 (Change of court reporters.)

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